TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 24 //

THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, PLAINTIFF IN ERROR,

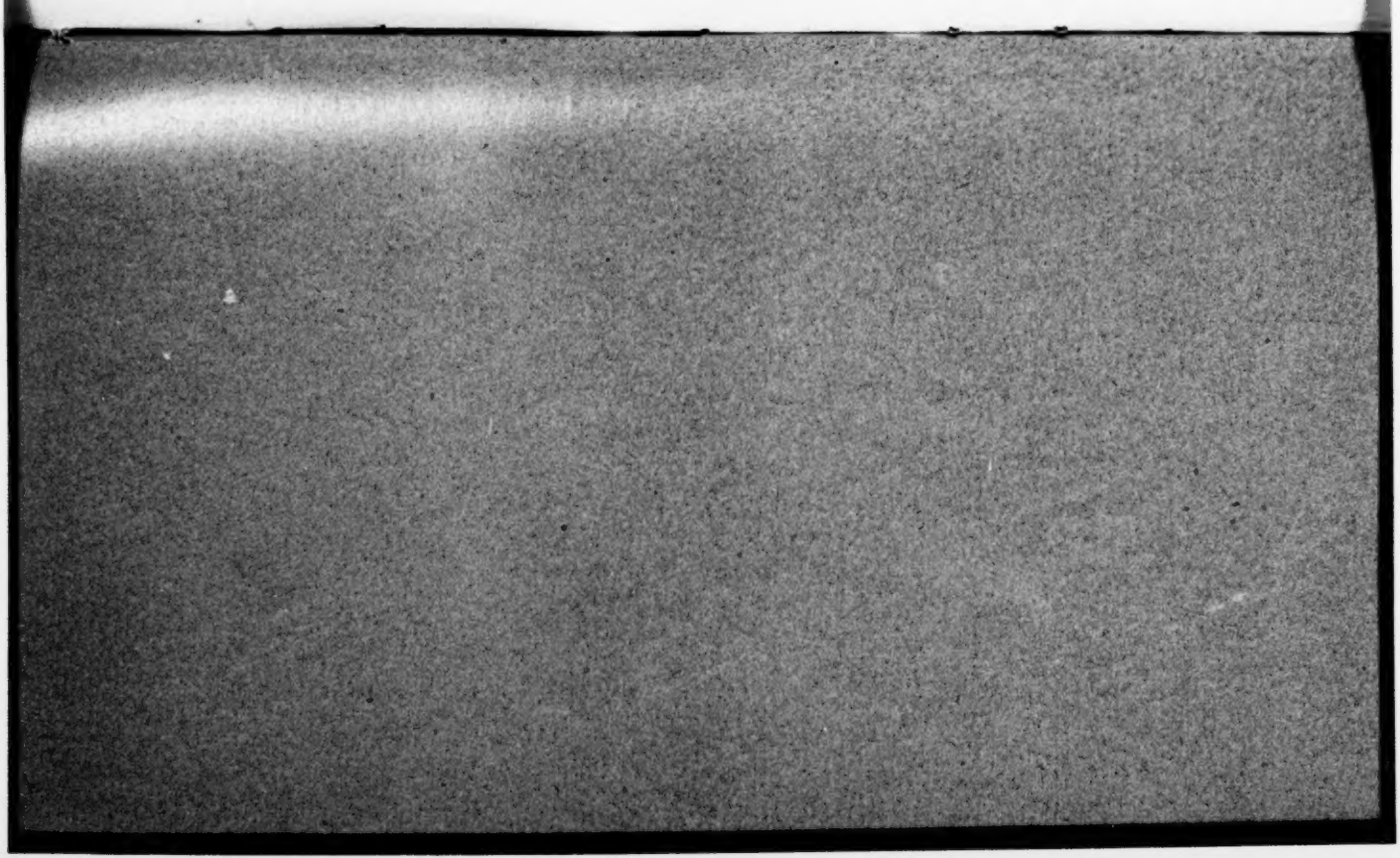
vs.

H. W. HICKMAN, JAMES COWGILL, AND JOSEPH FLORY, CONSTITUTING THE BOARD OF RAILROAD AND WAREHOUSE COMMISSIONERS OF THE STATE OF MISSOURI.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED AUGUST 31, 1900.

(17,502.)



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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

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THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

H. W. HICKMAN, JAMES COWGILL, AND JOSEPH FLORY, CONSTITUTING THE BOARD OF RAILROAD AND WAREHOUSE COMMISSIONERS OF THE STATE OF MISSOURI.

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1 UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the judges of the supreme court of the State of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, at the April term, 1899, thereof, between H. W. Hickman, James Cowgill, and Joseph Flory, constituting the board of railroad and warehouse commissioners of the State of Missouri, respondents, and The Missouri, Kansas & Texas Railway Company, appellant, a manifest error hath happened, to the great damage of the said Missouri, Kansas & Texas Railway Company, appellant, as aforesaid, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., in not exceeding thirty days from and after the date of the citation in this cause, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 20th day of July, in the year of our Lord one thousand eight hundred and ninety-nine

Issued at office, in the city of Jefferson, with the seal of the circuit court of the United States for the central division of the western district of Missouri, dated as aforesaid.

{ Seal of the United States Circuit Court, Central Division, for the Western District Missouri. }

H. C. GEISBERG,
Clerk Circuit Court United States, Western District of Missouri, Central Division.

Allowed by—
JAS. B. GANTT,
Chief Justice.

1½ *Return to Writ.*

UNITED STATES OF AMERICA, *Western District of Missouri,* } ss:

In obedience to the command of the within writ I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, together with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said supreme court, at the city of Jefferson, this 22nd day of August, A. D. 1899.

[Seal of the Supreme Court of Missouri.]

JNO. R. GREEN, *Clerk.*

[Endorsed:] No. 9331. United States circuit court, western district of Missouri, central division. H. W. Hickman *et al.*, railroad & warehouse comm'rs, respondents, *vs.* Missouri, Kansas & Texas Railway Co., appellant. Writ of error to the supreme court of the State of Missouri. Filed Jul- 20, 1899. Jno. R. Green, clerk.

2 The United States of America to H. W. Hickman, James Cowgill, and Joseph Flory, constituting the board of railroad and warehouse commissioners of the State of Missouri, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at Washington, D. C., not exceeding thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein The Missouri, Kansas & Texas Railway Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James B. Gantt, chief justice of the supreme court of Missouri, this 20th day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

JAS. B. GANTT,
Chief Justice.

2½ [Endorsed:] (Original.) Supreme court of Missouri. H. W. Hickman *et al.*, railroad & warehouse comm'rs, respondents, *vs.* Missouri, Kansas & Texas Railway Co., appellant. Citation. Filed Jul- 20, 1899. Jno. R. Green, clerk.

Executed the within writ in Jackson county, Mo., upon 27th day of July, 1899, by delivering a copy of the same to the within-named James Cowgill.

ROBERT S. STONE, *Sheriff,*
By FRANK FINNCANE, *D. S.*

1 D., $1.00.

The within-named defendant in error, H. W. Hickman, being dead, I executed the within writ, in the county of Stoddard and State of Missouri, on the first day of August, 1899, by delivering a true copy thereof to Mrs. H. W. Hickman, administratrix of the estate of said H. W. Hickman, deceased.

JAMES A. EVANS,
Sheriff of Stoddard County, Missouri,
By FRED EVANS, *Dept.*

Fees	$ 50
Mileage	1 80
	$2 30

Executed the within writ, in the city of St. Louis, Missouri, on the 7th day of August, 1899, by delivering a true copy of the same to the within-named Joseph Flory.

____ ____,
Sheriff of the City of St. Louis, Missouri.

Executed the within writ, in Cole county, Missouri, on the 11th day of August, 1899, by delivering a true copy of the same to E. C. Crow, attorney of record for defendants in error.

J. J. HENDERSON,
Sheriff Cole Co., Mo.

Fee, 1.00.

3 The United States of America to H. W. Hickman, James Cowgill, and Joseph Flory, constituting the board of railroad and warehouse commissioners of the State of Missouri, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at Washington, D. C., not exceeding thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein The Missouri, Kansas & Texas Railway Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James B. Gantt, chief justice of the supreme court of Missouri, this 20th day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES B. GANTT,
Chief Justice.

I hereby acknowledge service as above.

JOSEPH FLORY,
Chairman Mo. R. R. & W. Com.

3½ [Endorsed:] Filed Aug. 21, 1899. Jno. R. Green, clerk.

I hereby acknowledge service of a copy of the within citation this 21st day of August, 1899.

JOSEPH FLORY,
One of Defendants in Error.

4 STATE OF MISSOURI, *sct:*

Be it remembered that heretofore, to wit, on the 30th day of June, 1898, there was filed in the office of the clerk of the supreme court of the State of Missouri a copy of the judgment and order granting

an appeal from Cooper county, Missouri, in which W. H. Hickman *et al.* were respondents and The Missouri, Kansas and Texas Railway Company was appellant; which said copy of judgment and order granting an appeal are in words and figures as follows, viz:

Pleas and proceedings in the circuit court of Cooper county, Mo.

Be it remembered that at the regular October term, 1897, of said Cooper circuit court and on the third day of December, 1897, it being the twenty-second day of said term, the following, among other, proceedings were had, to wit:

H. W. HICKMAN JAMES COWGILL, and JOSEPH FLORY, Constituting the Board of Railroad and Warehouse Commissioners of the State of Missouri, Plaintiffs,

vs.

THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Defendant.

Now, on this third day of December, 1897, this case is called for trial, and thereupon the defendant, appearing by its attorney only for that special purpose, files a protest against any trial or proceedings in this case by this court at this time in words and figures as follows, to wit:

In the Circuit Court of Cooper County, Missouri, October Term, 1897.

H. W. HICKMAN, JAMES COWGILL, and JOSEPH FLORY, Suing as Members of the Board of Railroad and Warehouse Commissioners of the State of Missouri, Plaintiffs,

5 *vs.*

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Defendant.

Now comes the said Missouri, Kansas & Texas Railway Company and shows to the court that within due time after the commencement of this suit it filed a proper petition and bond for the removal of this cause to the United States court for the district of Missouri in which Cooper county is situated for the reason that the said suit involved an amount in excess of two thousand dollars, exclusive of interest and costs, and that at the time of the commencement of said suit the plaintiffs were residents and citizens of the State of Missouri and the defendant a citizen of the State of Kansas, where it is incorporated, which diverse citizenship has been continued.

That this court refused to make an order removing said case; but notwithstanding, the defendant, as was its right and duty, caused a complete transcript of all the pleadings, petition, and bonds in said case to be filed in the office of the clerk of the United States circuit court for the central division of the western district of Missouri, at Jefferson City, Missouri, within the time required by law,

and that said case has been pending in said United States court ever since.

That from term to term of said court the said case has been continued at the request and for the accommodation of the plaintiffs.

That this defendant did not know that the said cause was continued on the docket of this court after the filing of the transcript aforesaid in the United States court and had no notice or intimation that the case was set on the docket for trial at any time thereafter, and especially on December 2nd, 1897, except from an incidental remark in a letter received from Mr. W. M. Williams, of Boonville, which was written in relation to other cases, and in which he said that he knew nothing about this case, and that the defendant's attorney would have to see the attorney general
6 of the State in regard to trying the case on December 2nd, as was being arranged in regard to the other cases written about. This letter was received in St. Louis on November 30th by the defendant's attorney, who had not inquired about said case and who did not then understand that there was any intention to insist upon a trial of the case in this court and regarded the matter contained in said letter as a casual remark of Mr. Williams, and, although said letter contained the farther statement that he (Mr. Williams) understood that the attorney general would be in Boonville on December 3rd, still the defendant's attorney did not construe that as meaning that there would be any effort to try the case at that time or on Dec. 2nd, on which day it now transpires the case is docketed, or that there was any claim that this court had jurisdiction to try it.

The defendant states that no pleadings have been filed in this court by defendant because of the pendency of the case in the Federal court, and that no issues have been made up in this court.

Defendant further protests that it would be unreasonable and unjust to attempt to try the case at this time, or to take a default therein without the issues having been made up, or to require the defendant to plead under the circumstances at this time, since it has not received any reasonable notice that the plaintiffs intended to abandon the case in the United States court, or to refuse to appear therein, or to insist upon the right to try the case in this court.

And the defendant farther protests and says that the petition filed by the plaintiffs does not state facts sufficient to constitute a cause of action against the defendant, and that the plaintiffs, in the preliminary steps which they took in order to lay a foundation for the commencement of this suit by them, acted in disregard of the laws of the State of Missouri and in an arbitrary and illegal manner, and without waiving its objection to the jurisdiction of this court the defendant now objects to the introduction of any evidence under the petition for that reason.

7 Without waiving its objection to the jurisdiction of this court to proceed in this case, the defendant says that it is entitled to have sufficient time in which to make the necessary preparation to make a proper presentation of the matter to the

court and to establish that this court has no jurisdiction to proceed in this cause or to entertain jurisdiction over the same, or, if the court shall hold that it has such jurisdiction, then, to enable the defendant to determine what course it will pursue and whether or not it will submit to the jurisdiction of the court or whether it will take part in the proceedings in the case, still protesting against the jurisdiction of the court, or whether it will refuse to appear and take any part in the proceeding, and to the end that the defendant may make such preparation and have a reasonable time in which to determine what course it will pursue, it now respectfully asks that the court suspend any farther action in this cause until the next term of court, and, as a farther reason for such request, the defendant states that its attorney, who has had charge of said cause and is expecting to give it whatever attention may be necessary, is compelled to leave the city of Boonville on the night of December 2nd, in order to proceed at once to the city of Washington to give necessary attention to a case pending in the Supreme Court of the United States and liable to be called on December 6th or any day thereafter, and said attorney now leaves this protest and request to be filed in court on December 3rd, having prepared the same as soon as he learned that there was a serious intention on the part of the plaintiffs to attempt to force a trial in this case.

In filing this paper or in any suggestion or in making any objection or in any action hereafter, the defendant is not to be understood as in any manner or to any extent waiving its objection to the jurisdiction of this court in this case, nor as abandoning its claim that the case is now pending in the United States court aforesaid.

GEO. P. B. JACKSON,
Attorney for Defendant.

8 Which protest is by the court overruled, denied, and disregarded, and the trial ordered to proceed; to which action of the court the defendant excepts; and thereupon come the plaintiffs, by their attorney, Edward C. Crow, attorney general of the State of Missouri, and the defendant refusing to take part in the trial, the court proceeds with the same and doth hear the pleadings and evidence on the part of plaintiffs, and the same being fully considered, the court doth find that the plaintiffs are the regularly elected, duly qualified, and acting railroad and warehouse commissioners of the State of Missouri, and constitute the board empowered by law to classify and regulate railroad passenger and freight rates in the State of Missouri.

That the defendant is a railroad corporation, duly incorporated under the laws of the State of Kansas, and authorized to do business in the State of Missouri; that said defendant owns and operates a line of railroad in this State, a portion of the main line of which is located in the county of Cooper, State of Missouri, and extends from said county across the Missouri river over a bridge to the county of Howard, in the State of Missouri; that said bridge over which said railway is constructed is a part of the roadway of

the said defendant and is used as such; that said bridge is under the control and management of the said defendant; that complaint was legally made to plaintiffs as the board of railroad and warehouse commissioners aforesaid that arbitrary, illegal, and improper charges had been made by said defendant for carrying passengers and freight over that portion of defendant's said road which passes over said bridge; that plaintiffs, under authority given them as the board of railroad and warehouse commissioners of the State of Missouri, proceeded on the 16th day of July, 1895, after legal and proper notice had been given to defendant, to examine into and determine upon the reasonableness of the charges made by said defendant for carrying freight and passengers over the said bridge; that defendant belongs to the class of railroads designated by law as class "A," and that defendant is only authorized by law to charge
9 passengers at the rate of three cents per mile each; that said bridge does not exceed one mile in length; that defendant charges for carrying each local passenger over said bridge the said sum of three cents per mile, and in addition thereto makes an arbitrary charge of 25 cents for carrying each local passenger on its line of road over said bridge; that said charge of 25 cents so made, demanded, and received of each local passenger by defendant is illegal; that defendant illegally charges and collects on freights transported over said bridge and between local stations upon the line of its railway, in addition to the duly established rates for such transportation, as shown in the tariffs of rates filed by defendant in the office of plaintiffs, the sum of five cents per one hundred pounds on freights in lots of less than car-loads and two cents per one hundred pounds on freights in car-loads; that defendant was legally ordered and directed by plaintiffs that said illegal and arbitrary charges so made be discontinued; that said order of plaintiffs to defendant has been and is being by defendant ignored and disregarded, and defendant continues to charge, demand, and receive freight and passenger rates and charges in excess of those authorized by law for carrying freight and passengers on that portion of its road of which said bridge known as the Boonville bridge constitutes a part; and the court doth further find that the matters and facts set forth in plaintiffs' petition are true. Wherefore, the premises having been considered, it is ordered, adjudged, and decreed by the court that the defendant be and is forever enjoined and restrained from further demanding, charging, or receiving the said arbitrary sum of 25 cents, or any other arbitrary sum, from each local passenger over that portion of its road which consists of said bridge in addition to the legal rates of three cents per mile for each passenger so carried by defendant, and that defendant be forever restrained and enjoined from further demanding, charging, or receiving the arbitrary sum of five cents per one hundred pounds on freights of less than car-loads and two cents per one hundred pounds on
10 freights in car-loads over that portion of its road which consists of said bridge, or any other sum on said shipments, in addition to the duly and legally established rates for the transportation of freights over defendant's said road, and that plaintiffs have

and recover from defendant their costs in this behalf laid out and expended, and that execution issue therefor.

It is further ordered that defendant be served with a copy of this decree.

And afterwards, to wit, at the regular May term, 1898, of said court and on the 20th day of May, 1898, it being the fourth day of said term, the following further proceedings were had in said cause, to wit:

H. W. HICKMAN, JAMES COWGILL, and JOSEPH FLORY, Constituting the Board of Railroad and Warehouse Commissioners of the State of Missouri,

vs.

THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY.

Now, at this day, come the parties, by their respective attorneys, and the defendant's motion for a new trial in this cause heretofore filed herein coming on to be heard, and all and singular the premises being seen and heard and by the court fully understood, it is considered by the court that said motion be overruled, and the defendant's motion in arrest of judgment heretofore filed herein coming on to be heard, and all and singular the premises being seen and heard and by the court fully understood, it is considered by the court that said motion be overruled, and leave is by the court given the defendant to file its bill of exceptions herein on or before August 20th, 1898.

Whereupon said defendant files its affidavit for an appeal herein, and an appeal is hereby granted said defendant to the supreme court of the State of Missouri; and leave is by the court given
11 the defendant to file its bond for appeal herein in the sum of five hundred (500) dollars within ten days after the adjournment of this term of court, to be approved by the clerk thereof.

STATE OF MISSOURI, } ss:
County of Cooper, }

I, F. G. Hollman, clerk of the circuit court within and for the county of Cooper, in the State of Missouri, certify the above and foregoing to be a full, true, and complete copy of the judgment and order granting appeal in the above-entitled cause as fully as the same appears of record in my office.

In witness whereof I have hereunto set my hand and affixed the [L. S.] seal of said court. Done at office, in Boonville, county and State aforesaid, this June 24, 1898.

F. G. HOLLMAN, *Clerk.*

And afterwards, to wit, on the 24th day of December, 1898, the further following proceedings were had in said cause, viz:

H. W. HICKMAN ET AL., Resp.,
v.
M., K. & T. R'Y Co., App.

Now, at this day, the court, having fully considered and understood the motion heretofore filed to advance this cause on the docket, doth order that said motion be sustained, and that this cause be set for hearing at the January call, 1899.

Which said motion is in words and figures as follows, to wit:

In the Supreme Court of the State of Missouri, October Term, 1898.

W. H. HICKMAN, JAMES COWGILL, and JOSEPH FLORY, Constituting the Board of Railway & Warehouse Commissioners of the State of Missouri, Plaintiffs,

12 *vs.*

MISSOURI, KANSAS & TEXAS RAILROAD COMPANY, Defendant.

Motion to Advance.

Now, at this day, comes Edward C. Crow, attorney general of the State of Missouri, on behalf of the above-named plaintiffs, and files this his motion to advance the above cause upon the docket, and states as his reasons therefor that, first, a speedy determination is necessary for the good of the general public; second, because the citizens of Cooper and adjoining counties and a large number of the people of the State of Missouri are materially affected by the issues therein involved, which is to require said defendant to cease the exaction of arbitrary and excessive freight and passenger charges over its line of railroad over the Boonville bridge at Boonville, Missouri.

EDWARD C. CROW,
Attorney General.

And afterwards, to wit, on the 9th day of January, 1899, the further following proceedings were had in said cause, viz:

H. W. HICKMAN ET AL., Resp.,
v.
M., K. & T. R'Y Co., App.

Come now the said parties, by attorneys, and upon their stipulation it is ordered by the court that this cause be continued to the April term, 1899.

Which said stipulation is in words and figures as follows, to wit:

In the Supreme Court of Missouri, in Vacation.

H. W. HICKMAN ET AL., Respondents,
vs.
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Defendant.

13 It is hereby stipulated that the above-entitled cause shall be continued to the April term, 1899, of the supreme court.

EDWARD C. CROW,
Attorney for Respondents.
GEO. P. B. JACKSON,
Attorney for Appellant.

And afterwards, to wit, on the 6th day of March, 1899, there was filed in this cause the record of the Cooper county circuit court; which said record is in words and figures as follows, viz:

In the Supreme Court of Missouri, April Term, 1899.

H. W. HICKMAN, JAMES COWGILL, and JOSEPH FLORY, Constituting the Board of Railroad and Warehouse Commissioners of the State of Missouri, Respondents,
vs.
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Appellant.

Appeal from Cooper circuit court.

Record.

This was an injunction suit to restrain defendant from collecting certain tolls on the bridge across the Missouri river at Boonville. It was commenced in the circuit court of Cooper county on August 17, 1895, by filing the following petition:

In the Circuit Court of Cooper County, Missouri, in Vacation, 1895.

H. W. HICKMAN, JAMES COWGILL, and JOSEPH FLORY, Constituting the Board of Railroad and Warehouse Commission-
14 ers of the State of Missouri, Plaintiffs,
vs.
THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Defendant.

Plaintiffs state that they are the regularly elected, duly qualified, and acting railroad and warehouse commissioners of the State of Missouri, and constitute the board empowered by law to classify and regulate railroad passenger and freight rates in the State of Missouri; that the defendant is a railroad corporation, duly incorporated under the laws of the State of Kansas and authorized to do business in the State of Missouri; that said defendant owns and operates a line of railroad in this State, a portion of the main line of which is located in the county of Cooper, State of Missouri, and extends from said county across the Missouri river, over a bridge, to the county of Howard, in the State of Missouri; that said bridge over which said

railroad is constructed is a part of the roadway of the same and is used as such; that said bridge is under the control and management of said defendant; that informal complaints have heretofore been made to plaintiffs, as the board of railroad and warehouse commissioners aforesaid, that arbitrary, illegal, and improper charges had been made by said defendant for carrying passengers and freight over that portion of defendant's said road which passes over said bridge; that plaintiffs, under the authority given them as the board of railroad and warehouse commissioners aforesaid, proceeded on the 16th day of July, 1895, after formal notice had been given to defendant, to examine into and determine upon the reasonableness of the charges made by said defendant for carrying freight and passengers over the bridge aforesaid; that it was disclosed by said examination that the defendant was charging more for carrying passengers and freight over said bridge than is authorized by law; that said defendant belongs to the class of
15 railroad corporations designated by the laws of the State of Missouri as "class A;" that said class is only authorized to charge passengers at the rate of 3 cents per mile each; that said Boonville bridge is not exceeding one mile in length; that said defendant charges for carrying each local passenger over said bridge the sum of three cents per mile; that in addition thereto the said defendant makes an arbitrary charge of 25 cents for carrying each local passenger on its line of railway over said bridge; that said charge of 25 cents so made, demanded, and received of each local passenger by said defendant is illegal, improper, and unauthorized by law; that said defendant charges and collects on freights transported over said bridge and between local stations upon the line of its railway in addition to the duly established rates for such transportation, as shown in tariffs filed in the office of said railroad and warehouse commissioners, the sum of five (5) cents per one hundred pounds on freights in lots of less than car-loads and two cents per one hundred pounds on freights in car-loads; that said charges so made, demanded, and received are excessive, unauthorized, and in violation of law.

That on the 22d day of July, 1895, plaintiffs, as the board of railroad and warehouse commissioners aforesaid, after having duly considered the complaints heretofore filed against the defendant, as aforesaid, found that the same were sustained by proper and sufficient evidence, and made and entered of record an order, directed to the said defendant railway company, that the arbitrary charges made by defendant for crossing passengers and freight over the bridge at Boonville, Missouri, aforesaid, be discontinued, and that a copy of said finding and order was by said plaintiffs forwarded to the general manager of said defendant's road.

Plaintiffs state that they are informed and believe the fact to be that defendant is disregarding and ignoring said order, and is continuing, in violation of law, to charge, demand, and receive rates in excess of three cents per mile for carrying each passenger over
16 that portion of its road which consists of said bridge, and that said defendant continues to charge, demand, and receive

freight rates in excess of those authorized by law for carrying freight on that portion of its road of which said bridge over the Missouri river at Boonville constitutes a part.

Plaintiffs therefore ask that this court may issue a writ of injunction herein or such other process, mandatory or otherwise, as may seem necessary in the premises to restrain said defendant from further continuing to violate the law and the findings of said plaintiffs herein, acting as the board of railroad and warehouse commissioners aforesaid; that obedience to said order may be required of defendant, and that such other and further orders and decrees may be made in this cause as may seem upon a hearing to be right and proper in the premises.

F. R. WALKER,
Attorney General, for Plaintiffs.

In due time the defendant filed the following petition for removal to United States court:

In the Circuit Court of Cooper County, Missouri, October Term, 1895.

H. W. HICKMAN, JAMES COWGILL, and JOSEPH FLORY, Constituting the Board of Railroad and Warehouse Commissioners of the State of Missouri, Plaintiffs,
vs.
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Defendant.

Petition for Removal.

Your petitioner respectfully shows that it is the defendant in the above-entitled suit; that at and prior to time of the institution of this suit the defendant was, ever since has been, and now is a corporation created and existing under the laws of the State of
17 Kansas, and that at said times and dates it was, has been, and now is a citizen of the State of Kansas and non-resident of the State of Missouri, in which this suit is brought; that the plaintiffs in said suit at the time of the institution thereof all and each were, ever since have been, and now are citizens and residents of the State of Missouri.

That the said suit is of a civil nature to enjoin the collection of certain charges for the transportation of passengers and freight over and across a bridge across the Missouri river between the counties of Cooper and Howard, in the State of Missouri, and that the amount and matter in dispute in said suit exceeds, exclusive of interest and costs, the sum and value of two thousand dollars ($2,000).

That the controversy in said suit is wholly betwe-n citizens of different States, to wit, between your petitioner, a citizen of the State of Kansas at the time of the bringing of said suit and at this time, and the said plaintiffs, who, each and all of them, were then and still are citizens of the State of Missouri, and your petitioner offers herewith a bond, with good and sufficient security, for its entry in

the circuit court of the United States for the central division of the western district of Missouri on the first day of the next regular session or term, of a copy of the record in this suit, and for paying all costs that may be awarded by the circuit court of the United States, if said court shall hold that this suit was wrongfully or improperly removed thereto, and your petitioner prays this honorable court to proceed no farther herein, except to make an order for the removal of this case to said United States circuit court, and to accept the said surety and bond, and to cause the record herein to be removed into said circuit court of the United States in and for the central division of the western district of Missouri, and it will ever pray.

GEO. P. B. JACKSON,
Attorney for Petitioner.

18 Defendant also filed the following bond for removal:

In the Circuit Court of Cooper County, Missouri, October Term, 1895.

H. W. HICKMAN, JAMES COWGILL, and JOSEPH FLORY, Constituting the Board of Warehouse and Railroad Commissioners of the State of Missouri, Plaintiffs,
vs.
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Defendant.

Bond for Removal.

Know all men by these presents that we, the Missouri, Kansas & Texas Railway Company, as principal, and A. H. Stephens, of Cooper county, Missouri, as surety, are hereby held and firmly bound unto H. W. Hickman, James Cowgill, and Joseph Flory, constituting the board of warehouse and railroad commissioners of the State of Missouri, in the sum of $500.00; for the payment whereof, well and truly to be made, we bind ourselves, jointly and severally, by these presents.

The condition of this obligation is such that if the Missouri, Kansas & Texas Railway Company shall enter and file, or cause to be entered and filed, in the circuit court of the United States in and for the central division of the western district of Missouri, on the first day of its next regular term, copies of all process, pleadings, or records in the above-entitled suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States if the said court shall hold that the said suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise to remain under full force.

Witness our hands this — day of October, 1895.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY,
By JAMES HAGERMAN,
General Solicitor.

19 A. H. STEPHENS.

Thereupon the circuit court of Cooper county made the following order:

October Term, 1895.

OCTOBER 21ST, 1895.

H. W. HICKMAN, JAMES COWGILL, and JOSEPH FLORY, Constituting the Board of Railroad and Warehouse Commissioners of the State of Missouri,

vs.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY.

Now, at this day, comes the defendant in the above-entitled cause, by its attorney, and files herein its petition and bond for removal to the United States court, and it is now ordered by the court that said cause be reset for trial on October 25th, 1895.

And afterwards made the following order:

October Term, 1895.

OCTOBER 30TH, 1895.

H. W. HICKMAN, JAMES COWGILL, and JOSEPH FLORY, Constituting the Board of Railroad and Warehouse Commissioners of the State of Missouri,

vs.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY.

The petition for the removal of this cause to the United States court, heretofore filed, is now by the court overruled.

Thereupon defendant procured and filed in the United States circuit court at Jefferson City a transcript of the proceedings in the Cooper circuit court. Thereafter the last-named court made the following further orders:

January Term, 1896.

FEBRUARY 4TH, 1896.

"RAILROAD AND WAREHOUSE COMMISSIONERS OF THE STATE OF Missouri

vs.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY.

This cause is now here continued until the next term of this court."

May Term, 1897.

MAY 18TH, 1897.

H. W. HICKMAN, JAMES COWGILL, and JOSEPH FLORY, Constituting the Board of Railroad and Warehouse Commissioners of the State of Missouri,

vs.

THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY.

It is now here ordered that this cause be continued until the next term of this court, upon application and cost of the plaintiff, and that defendant recover of plaintiff costs of this continuance, and have execution therefor.

October Term, 1897.

DECEMBER 3RD, 1897.

(Caption same as last above.)

"Now, at this day, comes the defendant in the above-entitled cause, by its attorney, and files herein its protest against the action of the Cooper circuit court in said cause."

Subsequently, at the October term, 1897, on December 3, 1897, the case was, over the objections of defendant, taken up for trial, defendant protesting in writing to the action of the court.

21 The trial proceeded and the court rendered the following judgment:

H. W. HICKMAN, JAMES COWGILL, and JOSEPH FLORY, Constituting the Board of Railroad and Warehouse Commissioners of the State of Missouri,

vs.

THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY.

Now, on this 3rd day of December, 1897, this case is called for trial, and thereupon the defendant, appearing by its attorney only for that special purpose, files a protest against any trial or proceedings in this case by this court at this time in words and figures as follows, to wit:

In the Circuit Court of Cooper County, Missouri, October Term, 1897.

H. W. HICKMAN, JAMES COWGILL, and JOSEPH FLORY, Suing as Members of the Board of Railroad and Warehouse Commissioners of the State of Missouri, Plaintiffs,

vs.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Defendant.

Now comes the said Missouri, Kansas & Texas Railway Company and shows to the court that within due time after the commencement of this suit it filed a proper petition and bond for the removal

of this cause to the United States court for the district of Missouri, in which Cooper county is situated, for the reason that the said suit involved an amount in excess of two thousand dollars, exclusive of interest and costs, and that at the time of the commencement of said suit the plaintiffs were residents and citizens of the State of Missouri and the defendant a citizen of the State of Kansas,
22 where it is incorporated, which diverse citizenship has been continued.

That this court refused to make an order removing said cause, but, notwithstanding, the defendant, as was its right and duty, caused a complete transcript of all the pleadings, petitions, and bonds in said case to be filed in the office of the clerk of the United States court for the central division of the western district of Missouri, at Jefferson City, Missouri, within the time required by law, and that said case has been pending in said United States court ever since.

That from term to term of said court the said case has been continued at the request and for the accommodation of the plaintiffs.

That this defendant did not know that the said cause was continued on the docket of this court after the filing of the transcript aforesaid in the United States court, and had no notice or intimation that the case was set on the docket for trial at any time thereafter, and especially on December 2d, 1897, except from an incidental remark in a letter received from Mr. W. M. Williams, of Boonville, which was written in relation to other cases, and in which he said that he knew nothing about this case, and that the defendant's attorney would have to see the attorney general of the State in regard to trying the case on December 2d, as was being arranged in regard to the other cases written about. The letter was received in St. Louis on November 30th by the defendant's attorney, who had not inquired about said case and who did not then understand that there was any intention to insist upon a trial of the case in this court, and regarded the matter contained in said letter as a casual remark of Mr. Williams, and although said letter contained the farther statement that he (Mr. Williams) understood that the attorney general would be in Boonville on December 3d, still the defendant's attorney did not construe that as meaning that there would be any effort to try the case at the time or on December 2d, on which day it now transpires the case is docketed,
23 or that there was any claim that this court had jurisdiction to try it.

The defendant states that no pleadings have been filed in this court by defendant because of the pendency of the cause in the Federal court, and that no issues have been made up in this court.

Defendant further protests that it would be unreasonable and unjust to attempt to try the case at this time or to take a default therein without the issues having been made up or to require the defendant to plead under the circumstances at this time, since it has not received any reasonable notice that the plaintiffs intended to abandon the case in the United States court or to refuse to appear therein or to insist upon the right to try the case in this court.

And the defendant further protests and says that the petition filed by the plaintiffs does not state facts sufficient to constitute a cause of action against the defendant, and that the plaintiffs in the preliminary steps which they took in order to lay a foundation for the commencement of this suit by them acted in disregard of the laws of the State of Missouri and in an arbitrary and illegal manner, and without waiving its objection to the jurisdiction of this court the defendant now objects to the introduction of any evidence under the petition for that reason.

Without waiving its objection to the jurisdiction of this court to proceed in this case, the defendant says that it is entitled to have sufficient time in which to make the necessary preparation to make a proper presentation of the matter to the court, and to establish that this court has no jurisdiction to proceed in this cause or to entertain jurisdiction over the same, or if the court shall hold that it has such jurisdiction, then, to enable the defendant to determine what course it will pursue and whether or not it will submit to the jurisdiction of the court or whether it will take part in the proceedings in the case, still protesting against the jurisdiction of the court, or whether it will refuse to appear and take any part in the proceeding, and to the end that the defendant may make such prep-
24 aration and have a reasonable time in which to determine what course it will pursue, it now respectfully asks that the court suspend any further action in this cause until the next term of court, and as a farther reason for such request the defendant states that its attorney, who has had charge of said cause and is expecting to give it whatever attention may be necessary, is compelled to leave the city of Boonville on the night of December 2d, in order to proceed at once to the city of Washington to give necessary attention to a case pending in the Supreme Court of the United States and liable to be called on December 6th or any day thereafter, and said attorney now leaves this protest and request to be filed in court on December 3rd, having prepared the same as soon as he learned that there was a serious intention on the part of plaintiffs to attempt to force a trial in this case.

In filing this paper or in any suggestion or in making any objection or in any action hereafter the defendant is not to be understood as in any manner or to any extent waiving its objection to the jurisdiction of this court in this case nor as abandoning its claim that the case is now pending in the United States court aforesaid.

GEO. P. B. JACKSON,
Attorney for Defendant.

Which protest is by the court overruled, denied, and disregarded and the trial ordered to proceed; to which action of the court the defendant excepts, and thereupon come the plaintiffs, by their attorney, Edward C. Crow, attorney general of the State of Missouri, and the defendant refusing to take part in the trial, the court proceeds with the same and doth hear the pleadings and evidence on the part of the plaintiffs, and the same being fully considered, the

court doth find that the plaintiffs are the regularly elected, duly qualified, and acting railroad and warehouse commissioners of the State of Missouri and constitute the board empowered by law to classify and regulate railroad passenger and freight rates in the State of Missouri; that the defendant
25 is a railroad corporation duly incorporated under the laws of the State of Kansas and authorized to do business in the State of Missouri; that said defendant owns and operates a line of railroad in this State, a portion of the main line of which is located in the county of Cooper, State of Missouri, and extends from said county across the Missouri river over a bridge to the county of Howard, in the State of Missouri; that said bridge over which said railway is constructed is a part of the roadway of the said defendant and is used as such; that said bridge is under the control and management of the said defendant; that complaint was legally made to plaintiffs, as the board of railroad and warehouse commissioners aforesaid, that arbitrary, illegal, and improper charges had been made by said defendant for carrying passengers and freight over that portion of defendant's said road which passes over said bridge; that plaintiffs, under authority given them as the board of railroad and warehouse commissioners of the State of Missouri, proceeded, on the 16th day of July, 1895, after legal and proper notice had been given to defendant, to examine into and determine upon the reasonableness of the charges made by said defendant for carrying freight and passengers over the said bridge; that defendant belongs to the class of railroads designated by law as class "A," and that defendant is only authorized by law to charge passengers at the rate of three cents per mile each; that said bridge does not exceed one mile in length; that defendant charges for carrying each local passenger over said bridge the said sum of three cents per mile, and in addition thereto makes an arbitrary charge of 25 cents for carrying each local passenger on its line of road over said bridge; that said charge of 25 cents so made, demanded, and received of each local passenger by defendant is illegal; that defendant illegally charges and collects on freights transported over said bridge and between local stations upon the line of its railway, in addition to the duly established rates for such transportation, as shown in the tariffs of rates filed by defendant in the office of
26 plaintiffs, the sum of five cents per one hundred pounds on freights in lots of less than car-loads, and two cents per one hundred pounds on freight in car-loads; that defendant was legally ordered and directed by plaintiffs that said illegal and arbitrary charges so made be discontinued; that said order of plaintiffs to defendant has been and is being by defendant ignored and disregarded and defendant continues to charge, demand, and receive freight and passenger rates and charges in excess of those authorized by law for carrying freight and passengers on that portion of its road of which said bridge known as the Booneville bridge constitutes a part; and the court doth further find that the matters and facts set forth in plaintiff's petition are true. Wherefore, the premises having been considered, it is ordered, adjudged, and de-

creed by the court that the defendant be and is forever enjoined and restrained from further demanding, charging, or receiving the said arbitrary sum of 25 cents or any other arbitrary sum from each local passenger over that portion of its road which consists of said bridge, in addition to the legal rate of three cents per mile for each passenger so carried by defendant, and that defendant be forever restrained and enjoined from further demanding, charging, or receiving the arbitrary sum of five cents per one hundred pounds on freights of less than car-loads and two cents per one hundred pounds on freights in car-loads over that portion of its road which consists of said bridge, or any other sum on said shipments in addition to the duly and legally established rates for the transportation of freights over defendant's said road, and that plaintiffs have and recover from defendant their costs in this behalf laid out and expended, and that execution issue therefor.

It is further ordered that defendant be served with a copy of this decree."

The defendant moved for a new trial, which was refused, and in accordance with the leave granted by the court defendant
27 filed the following bill of exceptions:

In the Circuit Court of Cooper County, Missouri, October Term, 1897.

H. W. HICKMAN, JAMES COWGILL, and JOSEPH FLORY, Constituting the Board of Railroad and Warehouse Commissioners of the State of Missouri, Plaintiffs,

vs.

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Defendant.

Be it remembered that at the October term of the Cooper circuit court, it being December 3, 1897, before the Hon. Dorsey W. Shackleford, judge of said court, the following proceedings were had:

Appearances: Edward C. Crow, attorney general, and S. B. Jeffries, assistant attorney general, for plaintiffs.

The defendant appeared specially and only for the purpose of protesting against any action in this case by this court at this time, and filed the following protest:

In the Circuit Court of Cooper County, Missouri, October Term, 1897.

H. W. HICKMAN, JAMES COWGILL, JOSEPH FLORY, Suing as Members of the Board of Railroad and Warehouse Commissioners of the State of Missouri, Plaintiffs,

vs.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Defendant.

Now comes the said Missouri, Kansas & Texas Railway
28 Company and shows to the court that within due time after the commencement of this suit it filed a proper petition and

bond for the removal of this cause to the United States court for the district of Missouri in which Cooper county is situated, for the reason that the said suit involved an amount in excess of two thousand dollars, exclusive of interest and costs, and that at the time of the commencement of said suit the plaintiffs were residents and citizens of the State of Missouri and the defendant a citizen of the State of Kansas, where it is incorporated, which diverse citizenship has been continued.

That this court refused to make an order removing said cause, but notwithstanding the defendant, as was its right and duty, caused a complete transcript of all the pleadings, petitions, and bonds in said cause to be filed in the office of the clerk of the United States circuit court for the central division of the western district of Missouri, at Jefferson City, Missouri, within the time required by law, and that said cause has been pending in said United States court ever since.

That from term to term of said court the said case has been continued at the request and for the accommodation of the plaintiffs.

That this defendant did not know that the said cause was continued on the docket of this court after the filing of the transcript aforesaid in the United States court, and had no notice or intimation that the case was set on the docket for trial at any time thereafter, and especially on December 2d, 1897, except from an incidental remark in a letter received from Mr. W. M. Williams, of Boonville, which was written in relation to other cases, and in which he said he knew nothing about this case, and that the defendant's attorney would have to see the attorney general of the State in regard to trying the case on December 2d, as was being arranged in regard to the other cases written about. This letter was re-
29 ceived in St. Louis on November 30th by the defendant's attorney, who had not enquired about said cause, and who did not then understand that there was any intention to insist upon a trial of the case in this court, and regarded the matter contained in said letter as a casual remark of Mr. Williams, and although said letter contained the farther statement that he (Mr. Williams) understood that the attorney general would be in Boonville on December 3d, still the defendant's attorney did not construe that as meaning that there would be any effort to try the case at that time or on December 2d, on which day it now transpires the case is docketed, or that there was any claim that this court had jurisdiction to try it.

The defendant states that no pleadings have been filed in this court by defendant because of the pendency of the case in the Federal court, and that no issues have been made up in this court.

Defendant further protests that it would be unreasonable and unjust to attempt to try the case at this time or to take a default therein, without the issues having been made up, or to require the defendant to plead under the circumstances at this time, since it has not received any reasonable notice that the plaintiffs intended to aban-

don the case in the United States court, or to refuse to appear therein, or to insist upon the right to try the case in this court.

And the defendant further protests and says that the petition filed by the plaintiff does not state facts sufficient to constitute a cause of action against the defendant, and that the plaintiffs, in the preliminary steps which they took in order to lay a foundation for the commencement of this suit by them, acted in disregard of the laws of the State of Missouri and in an arbitrary and illegal manner; and, without waiving its objection to the jurisdiction of this court, the defendant now objects to the introduction of any evidence under the petition for that reason.

Without waiving its objection to the jurisdiction of this court to proceed in this case, the defendant says that it is
30 entitled to have sufficient time in which to make the necessary preparation to make a proper presentation of the matter to the court, and to establish that this court has no jurisdiction to proceed in this cause or to entertain jurisdiction over the same, or if the court shall hold that it has such jurisdiction, then to enable the defendant to determine what course it will pursue, and whether or not it will submit to the jurisdiction of the court, or whether it will take part in the proceedings in the case, still protesting against the jurisdiction of the court, or whether it will refuse to appear and take any part in the proceeding, and to the end that the defendant may make such preparation and have a reasonable time in which to determine what course it will pursue, it now respectfully asks that the court suspend any farther action in this cause until the next term of court, and as a farther reason for such request the defendant states that its attorney, who has had charge of said case, and is expected to give it whatever attention may be necessary, is compelled to leave the city of Boonville on the night of December 2d in order to proceed at once to the city of Washington to give necessary attention to a case pending in the Supreme Court of the United States and liable to be called on December 6th or any day thereafter, and said attorney now leaves this protest and request to be filed in court on December 3d, having prepared the same as soon as he learned that there was a serious intention on the part of the plaintiffs to attempt to force a trial in this case.

In filing this paper or in any suggestion or in making any objection or in any action hereafter, the defendant is not to be understood as in any manner or to any extent waiving its objection to the jurisdiction of this court in this case, nor as abandoning its claim that the case is now pending in the United States court aforesaid.

GEO. P. B. JACKSON,
Attorney for Defendant.

31 Which protest was by the court overruled, denied, and disregarded, and the trial of the case ordered to proceed.

To which action of the court the defendant at the time duly excepted.

Thereupon the case was taken up for trial, and the defendant de-

clined to take part therein; and the plaintiffs, to sustain the issues upon their part, offered evidence as follows, to wit:

J. F. GMELICH, being duly sworn in behalf of the plaintiffs, testified as follows:

Direct examination by Mr. CROW:

Mr. PENDLETON: I was requested by Mr. Jackson not to make any objection without saving the objection to the jurisdiction of the court, and, saving that objection as made in the protest filed, we renew the objection for the farther reason the petition does not state facts sufficient to constitute a cause of action, and we object to any trial being had for the reason the defendant has no answer filed. I would like to have the pleadings filed and the issue made.

Which objections were by the court overruled.

To which action of the court in overruling said objections and each of them the defendant duly excepted at the time.

Mr. CROW: Mr. Gmelich, please state your name and residence.

A. My name is James F. Gmelich; Boonville, Missouri.

Q. I will commence rather in the middle of this proceeding on account of some papers that Gen. Harding has gone after. You are acquainted with the location of the M., K. & T. Railway Company's track that runs through your city?

A. Yes, sir.

Q. And the operation of the trains thereon?

A. Yes, sir.

Q. You are acquainted with the location of the bridge
32 here at Boonville?

A. Yes, sir.

Q. I will get you to state if you have any knowledge of the custom of the M., K. & T. Railway Company as to the charges between this point and points between here and Moberly on their lines, with reference to the amount—whether it is in excess of three cents a mile.

A. Yes, sir; I know it is. I have traveled that way frequently, and there is an additional charge. In addition to the mileage, there is a charge of twenty-five cents toll for crossing that bridge.

Q. Well, for what?

A. Simply—I don't know——

Q. How? Twenty-five cents the whole train or each passenger?

A. Each passenger pays twenty-five cents toll each way.

Q. You have paid that toll yourself?

A. Yes, sir; I have.

Q. How recently?

A. Well, I have paid it frequently.

Q. Well, within the last twelve months?

A. Well, within the last twelve months I couldn't say, because a short time ago a party of us went down to Jefferson City and we got round-trip tickets. They make a reduction on round-trip tickets.

Q. I will get you to state, Mr. Gmelich, whether or not you are acquainted with the custom of the road with reference to charges from points beyond Moberly—with reference to charges from this town to points beyond Moberly.

A. I think when they are competing with other lines, why, it seems that they knock that out or do something.

Q. You know nothing about the organization of the officers of the company? Do you know whether the bridge company keeps an office in this city?

A. I don't think they do.

Q. You have lived here a great many years?

A. I have lived here a great many years.

Q. You are familiar with all the business people of the city?

A. Yes, sir.

Q. If they had an office here would you be likely to know
33 it?

A. I think I would. I have never heard of any.

Q. Do you know who has charge of the bridge here?

A. I don't know positively; this man down there, George Jacobs, tends to opening the bridge in the summer time—watchman or whatever they may be.

Q. Do you know whether or not the agent of the M., K. & T. R'y Co. has any direction or control over the bridge?

A. I don't know whether he does or not.

Q. Do you know whether the bridge is used for wagon purposes?

A. It is not used for that purpose at all.

Q. Was it ever?

A. No, sir.

Q. Is it for foot passengers?

A. No, sir.

Q. As to freight traffic, do you know anything about that?

A. I don't know anything about that because I am not acquainted with it.

Q. You ship goods here frequently?

A. Yes, sir; I did.

Q. Was there ever any toll charges then?

A. I don't know. I have always been a small shipper; more by express than anything else.

(Witness excused.)

FRED SAUTER, being duly sworn in behalf of the plaintiffs, testified as follows:

Direct examination by Mr. CROW:

Q. You are a resident of Boonville?

A. Yes, sir.

Q. How long have you lived here?

A. I have lived here 27 years.

Q. You are in the mercantile business here?
A. Yes, sir.
Q. Engaged in buying and selling merchandise and shipping?
A. Yes, sir.
Q. You are acquainted with the M., K. & T. Railway Company's tracks in your city?
A. Yes, sir.
Q. Acquainted with the location of this bridge?
A. Yes, sir.

34 Q. Do you know whether or not the M., K. & T. Railway Company has control of the bridge?

A. I am not sure, but it seems so.
Q. Do you know whether or not the bridge company as a corporation has an office in this city?
A. I never heard of any.
Q. You lived here when this bridge was erected?
A. Yes, sir.
Q. And you say that to your knowledge that corporation never maintained an office here?
A. I never heard of any.
Q. Well, who has had charge during all these years of this bridge?
A. Well, I think the M., K. & T. Railway Company.
Q. Well, has any one located here, representing either the railroad company or the bridge company, had control or the management and operation of the bridge to your knowledge?
A. I don't know any particular one, but it seems, my impression is, it is under the control of the M., K. & T. road. I may be mistaken. I don't know.
Q. I will get you to state if you know anything about the M., K. & T. Railway Company charging a toll of twenty-five cents for passengers to points between here and Moberly on the road.
A. Yes, sir; I had occasion to go to Fayette twice last month.
Q. What is the distance from here to Fayette by rail?
A. I think it is fifteen miles; isn't it? It may be only twelve miles. I don't know exactly what it is.
Q. How much fare did you pay?
A. Sixty-five cents.
Q. Well, if it was fifteen miles, that would be forty-five cents?
A. I guess it is twelve miles.
Q. You purchased a ticket?
A. Yes, sir.
Q. Where did you purchase it?
A. Here at the depot.
Q. Where?
A. At the M., K. & T. depot.
Q. Of their agent in charge of their station?
A. Yes, sir; Mr. Boyd.

35 Q. On that ticket was there anything that called for twenty-five cents for toll on the bridge?

A. I don't think there was; it just said Fayette. I never noticed anything.

Q. Well, you have been buying tickets and going over there for years?

A. Well, I haven't been going——

Q. I mean across the river?

A. Yes, sir.

Q. Did you ever notice anything on any of their tickets that called for toll for the bridge?

A. I don't remember. I don't think it did.

Q. You never received a separate ticket?

A. No, sir.

Q. And you say you paid that rate, twenty-five cents per passage, twice last month?

A. Yes, sir; for November.

Q. November, 1897?

A. Yes, sir; and October.

Q. Do you know anything about whether there is any extra charges over the bridge for freight?

A. I couldn't say that.

Q. You never examined your waybills?

A. No.

Q. Now, do you know as to whether or not they charge toll for business from here to St. Louis?

A. I think not, because the rates over the Missouri Pacific or the M., K. & T. are just the same; so there couldn't be any charges.

Q. Do you know whether or not they charge this toll at points, say, from Moberly to Fayette westward to Sedalia and points beyond?

A. Where there is no competing lines.

The COURT: Do you know of any particular individual case? If so, state that. Do you know what the rate from Sedalia to Moberly is?

A. No; I do not.

Mr. CROW: Do you know the distance from Moberly to Sedalia?

A. I can't say that, either.

Q. Have you ever had occasion to go over to the junction over here?

A. No; I never went to the junction.

(Witness excused.)

C. C. BELL, being duly sworn in behalf of the plaintiffs, testified as follows:

36 Direct examination by Mr. CROW:

Q. Mr. Bell, how long have you resided in Boonville?

A. Off and on since '54.

Q. Well, you were here then, a resident of this city, when the bridge was erected?

A. No, sir; not during those years. I was a resident of Texas then.

Q. Well, do you know of any one now or in the past that has been located here in your town that has maintained an office for the bridge company in this city?

A. I do not.

Q. Have they none here now?

A. Not that I know of.

Q Are you acquainted with the custom of this railroad company, the M., K. & T., as to charging toll for travel between Boonville and points beyond the river?

A. You mean for passenger traffic?

Q. Yes, sir; for passenger traffic.

A. I know there is an extra charge made for crossing the river. At least it seems to be when you compute the distance.

Q. Have you ever had occasion to ride across there and notice that charge yourself?

A. Yes, sir.

Q. What points?

A. Different points.

Q. Did you ever ride over to the junction?

A. Yes, sir.

Q. What charge do they make for going over there?

A. They take out ten miles of mileage for the bridge.

Q. That is, when you have a mileage book?

A. Yes, sir.

Q. That is equal to twenty-five cents?

A. Yes, sir.

Q. You pay twenty-five dollars for a thousand-mile ticket?

A. That is right.

Q. No-, how far is it to the junction?

A. It is less than three miles.

Q. And how much do they tear out of your mileage book when you go to the junction?

A. It is equal to about twelve or thirteen miles.

Q. Taking ten miles out for the bridge?

A. I think so.

37 Q. Did you ever have occasion to buy a ticket across there?

A. Yes, sir; I have.

Q. To the junction?

A. Yes, sir.

Q. What did they charge you?

A. I think it is thirty-five cents.

Q. Do you know whether the freight traffic—as to whether or not there is any charge for toll there?

A. Well, how do you mean?

Q. Well, I mean any bridge traffic in addition to the railroad traffic.

A. I have no experience in shipping local freight. In shipping through freight I have noticed that in long distances there is not.

The COURT: There is no bridge toll on freight for long distances?

A. Long distances and competing points there is not.

Q. How about passenger tariff for points, say Moberly and on to St. Louis, is there any bridge toll there?

A. I suppose St. Louis being a competing point, I suppose it is the same as the Missouri Pacific, and in fact I know it is.

Q. You have ridden over both roads and paid the same fare?

A. Yes, sir.

Q. Do you know how much mileage they tear out from here to St. Louis?

A. One hundred and eighty something; I disremember the exact amount.

Mr. CROW: I believe you stated you didn't know the exact distance from here to Franklin junction?

A. I think it is something less than three miles.

Q. Well, you know it is less than three miles, don't you?

A. Yes, sir; something less than three miles.

Q. Have you ever had occasion to go to Kingsbury?

A. Yes, sir; I did.

Q. Do you know how far that is?

A. It is just across the river; possibly a mile.

Q. About a mile, isn't it?

A. Yes, sir.

38 Q. From the station? Well, what did they charge you there?

A. I don't remember, but I think it is possibly the same as the bridge.

Q. Twenty-five cents?

A. Yes, sir; I think—I don't remember that. It has been some time since I bought a ticket to Kingsbury.

(Witness excused.)

J. H. BROKMEYER, being duly sworn in behalf of the plaintiffs, testified as follows:

Direct examination by Mr. CROW:

Q. How long have you lived here, Mr. Brokmeyer?

A. About 27 years.

Q. Have you had occasion to ride over this M., K. & T. railroad from Boonville?

A. Yes, sir.

Q. To what points have you ridden in the last twelve months on that line?

A. I generally go to St. Louis.

Q. Do you know anything about the charging of twenty-five cents for tariff on the bridge on each passenger that goes over?

A. No; I don't.

A. You don't know anything about that?

A. I know I have come home on a ticket to the junction one time and they said I would have to pay thirty-five cents more.

Q. Do you know how far it is to the junction?

A. Well, I don't know; that was about three miles.

Q. Well, did you pay it?
A. O, yes.
Q. When was that?
A. That was six months ago.

(Witness excused.)

JAMES HARDING, being duly sworn on behalf of the plaintiffs, testified as follows:

Direct examination by Mr. CROW:

Q. What official position do you occupy?
39 A. I am secretary of the board of railroad and warehouse commissioners.
Q. How long have you been secretary?
A. Nearly nine years.
Q. Nearly nine years?
A. Yes, sir.
Q. What position did you occupy before that?
A. I was a member of the railroad commission.
Q. For how long?
Q. For twelve years.
Q. For twelve years, then, you have been in the services of the railway commission office in this State—twenty-one years?
A. Twenty-one years next January.
Q. You are familiar with the property of the M., K. & T. through the city of Boonville?
A. Yes, sir.
Q. You are familiar with this bridge over the Missouri river?
A. Yes, sir.
Q. I will get you to state if in your official capacity you have ever had occasion to investigate the relation between the M., K & T. Railway Company and the bridge company.
A. Never, excepting as the matters came up in the investigation of charges.
Q. Well, you were present when that investigation was conducted?
A. Yes, sir.
Q. I will get you to state if you know from your own knowledge, not as a matter of record, but as your own knowledge, as to whether or not they are a separate corporation.
A. There is but one corporation makes report to the railroad commission.
Q. But one corporation makes report to the railroad commission?
A. There is no report made for the Boonville Bridge Association.
Q. Are you familiar with the distance on this road from here to Fayette and from here to Franklin junction?
A. Well, on the railroad schedule it is two miles; to Fayette it is twelve miles.

Q. Have you got anything in that book there that will show the distances?

A. I don't think so. The mileage table doesn't show any
40 distances, but I have as from their distance table the distance to the junction is two miles; Fayette, twelve miles.

Q. Do you know anything about the charges that they make?

A. I know nothing excepting so far as shown by their tariffs.

Q. What do those tariffs show? You have got a copy of them there, have you?

A. They are referred to here in this (meaning a book).

Q. That tariff sheet you have in the book is the report they made themselves?

A. Yes, sir. The statement here made in the report of the official proceedings, in the hearing referred to, is as follows: Freight charges referred to are stated as follows under the head of special instructions, page 4, M., K. & T., local distance tariff number 300, effective July 14, 1893: Boonville bridge toll.—On all freight moving under this tariff and passing over the Boonville bridge the following arbitraries will be added to distance tariff rates to cover Boonville bridge toll: All L. C. L. freight, 5c. over 100 pounds; all C. L. freight, 2c. over 100 pounds, at minimum weight, 20,000 pounds. That special instruction is carried on all local distance tariffs up to date.

Q. That report there is under their signature?

A. Yes, sir.

Q. Now, do they make any report as to passenger tariffs?

A. No, sir. Their tariff is fixed by law.

Q. They are not required to make any report as to passenger tariff?

A. No, sir. That is understood to be three cents a mile.

Q. Have you got with you a certified copy of the proceedings of the railroad and warehouse commissioners in the investigation?

A. I have not the original.

Q. A certified copy?

A. Yes, sir. It is in this report.

Q. Properly certified to there and printed there, is it? Just examine it and see if it is.

A. Yes, sir.

Mr. CROW: The statute in this proceeding provides that
41 the certified copy of the commission's report shall be evidence. We have it certified there in a book. That is a copy certified to by Gen. Harding himself. If your honor prefers we can furnish a typewritten copy.

The COURT: Just use your own pleasure.

Mr. CROW: I introduce that printed copy. Just consider that in. Said offer is marked "Exhibit A."

Mr. CROW: Gen. Harding, do you know whether or not the charter of the Boonville bridge requires that an office of that bridge be kept here in this city?

A. I never saw the charter.

Q. You never had occasion to investigate it?
A. No, sir.

Mr. CROW: At this point I want to ask leave to introduce a certified copy of the charter of the Boonville bridge, to show that they are required to keep an office here.

Said offer is in words and figures as follows, to wit:

STATE OF MISSOURI, *ss:*

I, Alexander A. Lesueur, secretary of state of the State of Missouri, hereby certify that the annexed pages contain a full, true, and complete copy of the articles of association of the Boonville Railroad Bridge Company, filed December 19th, 1870, as the same appears on file and of record in this office.

In testimony whereof I hereunto set my hand and affix the great seal of the State of Missouri. Done at office, in the city of Jefferson, this 13th day of January, 1898.

[GREAT SEAL.] A. A. LESUEUR,
Secretary of State.

UNITED STATES OF AMERICA.

STATE OF MISSOURI, } *ss:*
County of Cooper, }

Boonville Railroad Bridge Company.

Articles of Association and Agreement.

42 For the purpose of organizing a company to construct, maintain, and operate a toll-bridge over and across the Missouri river from a point in or near the city of Boonville, in the county and State aforesaid, to a point in or near the town of Franklin, in the county of Howard, in same State, for public use for the crossings of persons and property by both railroads and ordinary road travel, in accordance with the laws of the State of Missouri (see chapter 37, article 7, of the statute laws of said State), do enter into the following articles of association:

1st. The name and title of this association shall be "The Boonville Railroad Bridge Company."

2d. This company shall continue for one hundred years from the day these articles of association shall be filed with the secretary of state for the State of Missouri.

3d. The said bridge shall be constructed from a place in or near the city of Boonville, in the county of Cooper, across the Missouri river to a place in or near the town of Franklin, in the same State.

4th. The said bridge is to be a public toll one for crossing persons and property and to be used for both railroad and ordinary road travel at reasonable rates.

5th. The capital stock of this company shall be one million dollars, divided into shares of one hundred dollars each.

6th. The names and places of residence of the original directors

of this company who shall manage its affairs for the first year and until others are chosen in their places are:

Names.	Residence.
J. I. Stephens	Boonville, Missouri.
James M. Nelson	" "
H. Bunce	" "
John L. O'Bryan	" "
J. C. McFadden	" "
C. W. Sombart	" "
Wm. H. Trigg	" "
James H. Walker	Bunceton, Missouri.
N. G. Elliott	Howard county, Missouri.
S. T. Hughs	" "
A. Jaynes	Sedalia, Missouri.
John R. Barrett	" "
John F. Phillips	" "

7th. By-laws for the government of said company, not inconsistent with the laws of Missouri or these articles of association, shall be adopted.

Names of subscribers.	Places of residence.	No. of shares.
John L. O'Bryan	Boonville, Mo	Ten.
H. Bunce	Boonville, Mo	Ten.
Leslie Smith	Boonville, Mo	Ten.
J. L. Stephens	Boonville, "	Ten.
J. L. Birch	New York	Ten.
James M. Nelson	Boonville	Ten.
N. G. Elliott	New Franklin	Ten.
Milo Blair	Boonville	Ten.
D. Andrew	Boonville	Ten.
James H. Walker	Bunceton	Ten.
G. Heim	Boonville	Ten.
John H. Stephens	Bunceton	Ten.
J. R. Estill	Howard Co	Ten.
I. T. McFadden	Boonville	Ten.
Walz & Brenneisen	Boonville	Ten.
Wm. Harley	Boonville	Ten.
M. J. Wertheimer	Boonville	Ten.
Henry McPherson	Boonville	Ten.
S. T. Hughes	Howard	Ten.
Wm. H. Trigg	Boonville	Ten.
C. W. Sombart	Boonville	Ten.
Julius Sombart	Boonville	Ten.
A. A. Jaynes	Sedalia, Mo	Ten.
44 J. R. Barrett	Sedalia, Mo	Ten.
C. Newkirk	Sedalia, Mo	Ten.
Jno. F. Phillips	Sedalia, Mo	Ten.

Filed December 19, 1870.

FRANCIS RODMAN, *S'y of State.*

Q. I will get you to state whether or not the Boonville Bridge Company has ever maintained an office in this city.

A. Not to my knowledge.

Q. Now, do you know whether or not the Boonville Bridge Company and the M., K. & T. Railway Company, whether or not the securities of those two companies are maintained separately now?

A. I think not, sir.

Q. Well, do you know who owns the stock of the Boonville Bridge Company at this time?

A. I think very much the greater portion of it is owned by the Missouri, Kansas & Texas R'y Co.

Q. That is the company that operates this line of roads across the bridge?

A. Yes, sir.

Q. Do you know what proportion of it they own?

A. No, sir.

Q. Well, you have got it in that book there, haven't you?

A. In the report they make, the list in the report to the company—commission, I should say. It is in the report that is made by the company to the railroad commission.

Q. Well, have you got that?

A. No, sir.

Q. Haven't you got that statement there, that report?

A. It may be in the evidence here. It is made in the statement of Mr. Jackson to the commissioners.

Mr. CROW: I want to ask leave of the court to introduce a certified copy of the articles of incorporation of the M., K. & T. Railway Company as filed in the office of the secretary of state—not for the purpose of proving that they are a corporation, but for another purpose.

Said offer is in words and figures as follows:

45 STATE OF KANSAS, }
Office of the Secretary of State. }

I, W. E. Bush, secretary of state of the State of Kansas, do hereby certify that the following and annexed is a true and correct copy of the original articles of incorporation of the Missouri, Kansas and Texas Railroad Company as filed in my office on the 30th day of December, 1869.

In testimony whereof I have hereunto subscribed my name and affixed my official seal. Done at Topeka, Kansas, this 17th day of January, 1898.

[L. S.]

W. E. BUSH,
Secretary of State.

Articles of Incorporation of the Missouri, Kansas and Texas Railroad Company.

STATE OF KANSAS, } ss:
County of Bourbon, }

We, the undersigned, hereby certify that in accordance with the provisions of chapter No. 23, Laws of Kansas, A. D. 1868, page No. 190, we have associated ourselves together as a joint stock company under the name and title of the Missouri, Kansas and Texas Railroad Company.

The purposes for which said company is formed is the construction and operating of a railroad from a point on the State line of Kansas and Missouri where the Fort Scott branch of the Tebo and Neosho railroad of Missouri intersects the same, in a westerly or southwesterly direction through the city of Fort Scott to a point on the southern or western boundary of the State of Kansas, near the southwest corner thereof, through the counties of Bourbon, Allen, Neosho, Woodson, Wilson, Greenwood, Howard, Cowley, Sumner, Harper, Barber, Comanche, and Clark, an estimated distance of three hundred and fifty (350) miles.

46 The principal office of said company shall be in the city of Fort Scott, State of Kansas, until otherwise ordered.

The term for which said company shall exist shall be ninety-nine (99) years.

The number of directors shall be five (5), and George A. Crawford, H. T. Wilson, and J. R. Morley, of Fort Scott, State of Kansas, and A. C. Marvin and Cyrus Newkirk, of Sedalia, State of Missouri, shall be the directors for the first year.

The amount of the capital stock of said company shall be five million (5,000,000) dollars, divided into fifty thousand shares of one hundred dollars each.

Witness our hands this twenty-third day of December, A. D. 1869.

GEORGE A. CRAWFORD.
HIERO T. WILSON.
J. R. MORLEY.
ASA C. MARVIN.
CYRUS NEWKIRK.

STATE OF KANSAS, } ss:
County of Bourbon, }

Personally before the undersigned, a notary public in and for the county of Bourbon and State of Kansas, came George A. Crawford, H. T. Wilson, and John R. Morley, to me personally known to be the identical persons whose names are affixed to the foregoing certificate and who are citizens of the State of Kansas, and acknowledge the making and signing of the same to be their voluntary act and deed for the purposes therein stated.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this 23d day of December, A. D. 1869.

[SEAL.] P. H. TIERMAN,
Notary Public.

STATE OF MISSOURI, } ss:
County of Pettis, }

Personally before the undersigned, a notary public in and
47 for the county of Pettis and State of Missouri, came A. C. Marvin and Cyrus Newkirk, to me personally known to be the identical persons whose names are affixed to the foregoing certificate, and acknowledged the making and signing of the same to be their voluntary act and deed for the purposes therein stated.

In testimony whereof I have hereunto subscribed my name and affixed my official seal this 24th day of December, A. D. 1869.

[SEAL.] J. F. TOBIAS,
Notary Public.

WITNESS: Here is a statement of the stock list of the Boonville Railroad Bridge Company which was introduced as evidence by Mr. Jackson, the attorney of the Missouri, Kansas and Texas Railway Company, at the hearing of the cause. The stock list shows ten thousand shares.

Q. Well, you heard that statement made?

A. Yes, sir.

Q. Wait a minute. Without that memorandum in front of you, can you testify, of your own knowledge, as to the statement made by Mr. Jackson?

A. I can testify this is a correct copy of the list which he handed in himself.

Q. That was a memorandum furnished by him?

A. Yes, sir.

Q. As representing which?

A. The Missouri, Kansas & Texas Railway Company.

Q. Was that at the hearing?

A. Yes, sir.

Q. That is a part of the report, then?

A. Yes, sir.

Q. Looking at your report there, can you tell how much stock is owned by the M., K. & T. Railway Company?

A. At that time—June 6th, 1895—the Missouri, Kansas & Texas railway owned 9,893 shares out of 10,000.

Q. Who owned the other seven?

A.—

P. E. Fairbanks	1	share.
John Montgomery, Jr	5	"
48 Geo. P. B. Jackson	5	"
H. C. Rouse	10	"
Colgate Hoyt	5	"
Wm Dowd	5	"
Joel Freeman	5	"
Wm. Bond	5	"
Simon Sterne	5	"
Henry W. Poor	5	"
Thos. C. Purdy	5	"

Geo. J. Pollock	5 "
J. Hagerman	1 share.
J. H. Bond	2 shares.
Wm. O'Connell	5 "
C. G. Hedge	5 "
R. W. Maguire	2 "
N. G. Elliott	10 "
John S. Elliott	1 share.
John Cosgrove	1 "
Speed Stephens	9 shares.
H. Bunce	10 "

Q. Now, General, does that report there show how those shares are held—whether they are held in trust or not?

A. No, sir; I don't think it does.

Q. Well, do you know whether or not those shares were held in trust?

A. I don't; I think the bonds at one time were held in trust.

Q. Well, they were held by the trust company?

A. Yes; by the trust company, and I did know about the status of the bonds.

Q. Now, Gen. Harding, do you know the amount of the bonded indebtedness of the bridge?

A. I don't remember; no, sir.

Q. Well, do you know who takes care of those securities—keeps up the interest on the bonded debt?

A. The Missouri, Kansas & Texas Railway Company.

Q. Do you know who the officers of the bridge company are?

A. No, sir.

49 Q. You don't know whether they are stockholders in the M., K. & T. or not?

A. No, sir.

Q. You never had occasion to investigate that part of it?

A. No, sir. A copy of the list is in that report.

Q. You don't know anything about the freight at all except the tariff? You don't know anything except what the tariff shows?

A. No, sir; I know that is the regulation printed on their tariff sheets.

Q. Now, after the railway and warehouse commissioners had made the order set out in this report, I will get you to state whether or not the M., K. & T. Railway Company ever complied with that order.

A. They have not.

Q. They have ignored it, have they?

A. Yes, sir.

Q. And are still doing so?

A. Yes, sir.

Q. And by reason of their ignoring it these proceedings were instituted in behalf of the railway and warehouse commissioners?

A. Yes, sir.

(Witness excused.)

C. C. BELL, being recalled in behalf of the plaintiffs, testified as follows:

Direct examination by Mr. CROW:

Q. Mr. Bell, I will get you to state if you have ever had occasion to ship any freight locally from this point to points on the other side of the river.

A. I have; yes, sir; in car-load lots.

Q. At what time were those shipments made?

A. Well, during the last ten years; made some during the last six or eight weeks or two months.

Q. Now, I will get you to state, if you know, whether or not in addition to the regular tariff schedule of freight anything was added by the M., K. & T. Railway Company for toll.

A. We understood that on all local shipments, near-by shipments, there is a bridge toll.

Q. To what particular points have you made shipments lately?

50

A. Rocheport, New Franklin, Higbee.

Q. Taking the shipment to New Franklin, how much bridge toll did you pay per car on that?

A. A car-load of empty barrels, for instance, is nine dollars and something, some odd cents—about nine dollars—four dollars of which is bridge toll.

Q. Well, now, take down to Rocheport; what is the tariff there?

A. I think eleven dollars and something.

Q. How much?

A. I believe it was eleven dollars, the regular tariff rate. I am quoting rate on empty barrels on car-load lots.

Q. Four dollars of that is represented as bridge toll?

A. Yes, sir; that is our understanding. Whenever it is $24 this charge is $5, but $20 or less $4 represents the toll. This only applies to local shipments.

Q. You have occasion to ship freight locally very frequently?

A. Yes, sir.

Q. And have shipped and paid that tariff recently?

A. Sometimes the road will take it off where they get all the freight from the other end; sometimes, carrying freight through, they remit what is know- as the bridge toll.

Q. The charge is not uniform to all parties?

A. I suppose that is uniform to everybody.

Q. For instance, if you ship the barrels down there and didn't bring the barrels back you would have to pay bridge toll, but if you ship them back it would leave bridge toll for one way?

A. I am not prepared to say why that is done.

Q. Is that the fact?

A. Yes, sir.

Q. Then under these conditions the shipment to the same point is a different price?

A. Well, to be plain about this, I want to be understood when I say that our rates to these points says four dollars for seven thou-

sand pounds, which means a car-load of empty barrels. There is four dollars added to the bridge to any local point. Now, in
51 shipping through to distant points there is no extra charge made for the bridge, because then it is so much a hundred.

Q. I understood from your testimony and the other gentlemen here that this passenger and freight tariff operates simply as local charges from and to this town and other points near by on the road?

A. Yes, sir; locally. I don't think that that is added into passenger travel for long distances to competing points, but in local points it is.

(Witness excused.)

J. H. BROKMEYER, being recalled in behalf of plaintiffs, testified as follows:

Direct examination by Mr. CROW:

Q. Have you had occasion to ship any freight locally from Boonville to any point locally beyond the river?

A. Oh, yes, sir; I have had some occasion.

Q. Just designate to what particular point you shipped there and what particular class of freight.

A. For instance, whenever I want to ship a car-load of oats to Estill.

Q. Where is Estill?

A. About seven or eight or ten miles from here.

Q. The other side of the river?

A. Yes, sir.

Q. Was there any tariff or toll charged for the bridge?

A. Whenever there is a car-load they said to me that it is five dollars additional charge for the bridge.

Q. You paid it?

A. Yes, sir.

Q. How recently have you paid that?

A. That is a good while ago.

Q. Do you know whether they still charge that?

A. I believe they still have it the same way. I know I had to pay $17 for the car-load, and I believe the rate was the same as the other.

Q. Well, it is the same coming this way on local freight?

A. Yes, sir.

52 Q. It *is* five dollars additional charge?

A. That is my understanding about it.

(Witness excused.)

H. F. SANDERS, being duly sworn in behalf of the plaintiffs, testified as follows:

Direct examination by Mr. CROW:

Q. How long have you lived in Boonville?

A. About 12 or 15 years.

Q. Well, you are engaged in what business here?
A. Feed, fuel, and handle oil.
Q. Do you have occasion to ship a great deal of stuff over the M., K. & T. road?
A. Yes, sir.
Q. I will get you to state if you know whether there is a bridge toll on freight aside from the regular freight tariff.
A. Yes, sir.
Q. Do you know what it is per car on different classes of articles?
A. No, sir; I don't know exactly.
Q. Well, do you know on any particular article what it is?
A. No, sir; I don't remember exactly what it is now. I have tried to ship feed from over there several times and never could ship it on account of the bridge toll.
Q. Why?
A. It would cost too much. The bridge toll added to the freight would cost too much.
Q. As a matter of fact you never paid that toll?
A. No, sir; I never could pay it on account of the toll.
Q. You ship a great deal of stuff from here to Higbee?
A. Yes, sir.
Q. Do you know the number of miles from here to Higbee?
A. No, sir.
Q. Do you know the number of miles from here to any given point from which you ship to this town?
A. Well, no, sir. I ship from Moberly, Hannibal, and Higbee.
53 Q. Do you know what the distance is from here to Moberly?
A. About forty miles, I think.
Q. Do you know what the freight charges is per hundred pounds?
A. The way I get freight there is generally through freight.
Q. Is there any bridge toll on freight coming from Moberly here?
A. That I couldn't say.
Q. What rate do you pay?
A. That I couldn't say.
Q. What is the rate from here to Higbee on meal?
A. Forty cents a ton.
Q. That is from Higbee here?
A. Yes, sir.
Q. You pay forty cents a ton?
A. Yes, sir.
Q. How many tons on a car?
A. From twenty to thirty tons a car-load.
Q. That is, from Higbee here?
A. Yes, sir.
Q. You have the waybills showing that, have you?
A. Yes, sir.

(Witness excused.)

F. T. WALZ, being duly sworn in behalf of the plaintiffs, testified as follows:

Direct examination by Mr. CROW:

Q. Are you in the employ of the M., K. & T. railroad?
A. Yes, sir.
Q. In what capacity?
A. As agent now at the M., K. & T.
Q. In charge of the station here?
A. Yes, sir.
Q. Have you the tariff sheet of freight and passenger rates at this point to other points?
A. I have the two local tariffs. I was asked to bring the other tariff, but I couldn't very well get at that—couldn't very well tell what ones you wanted. Here is the two local tariffs.
Q. Will you please take them and turn to local tariff and tell what the rate is on meal in car-load lots from here to Higbee
54 or Higbee here? The rate would be the same both ways, wouldn't it?
A. Yes, sir; the freight would be the same either way. This tariff don't cover that. It covers it in car-loads, but not in use now. The local tariff is not here. However, here is sand, brick, and cord wood. The rate would be eight dollars.
Q. What would be the bridge charge?
A. It would be according to the weight.
Q. How much per hundred or ton?
A. Two cents per hundred.
Q. That would be two dollars per ton?
A. Yes, sir.
The COURT: It would be four dollars a ton, wouldn't it?
A. Yes, sir.
Mr. CROW: That would be on that class of articles?
A. Yes, sir.
Q. Coal, sand, brick, and cord wood?
A. Yes, sir.
Q. I understood you to say from Higbee to this point the charge on the waybill would be four dollars in excess of the statutory tariff rate for that class of freight?
A. No, sir; it would be four dollars. I mean four dollars per ton.
The COURT: Well, two cents per hundred.
Mr. CROW: Well, two cents a hundred in excess of the statutory tariff?
A. Yes, sir.
Q. Now, to what points on the line, from Boonville, out of Boonville, does the tariff apply?
A. To all shipments.
Q. Does it apply to shipments to Chicago?
A. Well, now, I couldn't answer that question exactly.
Q. Does it apply to shipments in Missouri?
A. No, sir; I believe that is not exactly the idea. I understand

the company means to charge—the bridge is allowed two cents on all shipments. While our tariff rates — through business enumerates or names so much on certain articles, I don't understand from our tariff that the bridge charges are added to the through business.

Q. On shipments off the Burlington and consigned to the M., K. & T., and the waybill comes to you to collect, is there a
55 bridge toll added to that?

A. That would have to rest with the company whether it settled for the bridge company.

Q. You collect the money here?

A. We collect it, but certain classification is allowed so much. Whether the bridge is allowed anything on that business I am not prepared to state.

Q. You know what that rate is?

A. Yes, sir.

Q. Take a box of dry goods. Now, how much in excess of the statute rate is that?

A. That is below. It is made in competition with the other line.

Q. It is the same as the Missouri Pacific?

A. Yes, sir.

Q. Then, if there is any bridge toll, it is absorbed in the haul?

A. Yes, sir.

Q. Then on shipments to St. Louis is it the same way?

A. Yes, sir.

Q. Suppose it is on a shipment from here to, say, Cedar City; is there a bridge toll on that?

A. Cedar City?

Q. Well, it would be North Jefferson on your line.

A. I don't know just the exact mileage to that point. It would be if it was less than the St. Louis tariff; I expect it would be. We would figure, then, the mileage applies so much for the bridge to any point this side of St. Louis, but when the mileage would figure up more than the St. Louis rate the St. Louis rate would apply.

Q. What is the rate from here to Fayette on live stock?

A. It would be ten dollars, standard cars, plus——

Q. Well, that $10 is the tariff statutory rate, is it?

A. Yes; plus the bridge charge, would be $4, shipment on hogs, and $4.40 cattle, would be the regular tariff.

Q. It would be $14 in one case and $14.40 in the other?

A. The bridge charge would simply be as in the other case—2 cents a hundred.

Q. When you bill a car-load of stock out of here for Fayette does that waybill and your consignment—does that call for any bridge charge?

A. Yes, sir.

56 Q. What is it marked down, as a separate item?

A. Yes, sir.

Q. On the waybill?

A. Yes, sir.

Q. You collect that, though, not for the bridge company, but for the railroad company?

A. Well, I don't know.

Q. In other words, you don't know the bridge company in your transactions?

A. Well, I am not acquainted with the bridge company. I made no remittance to the bridge company.

Q. Your remittances and collections all go to the M., K. & T. railroad?

A. Yes, sir; that we collect.

Q. I will get you to state if you know what the tariff on live stock—hogs, cattle, or sheep—would be from your station here at Boonville to Kingsbury, at the end of the bridge over there.

A. Well, that would just be the same as Fayette. Thirteen miles is the Missouri statute rate.

Q. How far is it from your station to Kingsbury?

A. I guess it is only a couple of miles.

Q. Now, what would be the tariff without the bridge?

A. Well, the tariff would be the Missouri statute rates. If it only went one mile it would be the same as thirteen miles.

Q. You are authorized to charge the same?

A. Yes, sir.

Q. How would it be down to Franklin junction?

A. That is about three miles; would be just the same.

Q. What is your passenger fare? There is no such tariff as that in regard to passengers?

A. No, sir.

Q. You say the distance is about a mile from your station at Kingsbury?

A. A little more than a mile.

Q. Say mile and a half?

A. Yes, sir; about that.

Q. What would be the statutory charge?

A. Three cents a mile would be four cents and a half.

Q. What do you charge for a ticket?

A. Thirty cents.

Q. Twenty-five cents of that is for the bridge toll?

A. That is what we understand. Of course, I don't know.

Q. There is nothing on the ticket to indicate that there is
57 any bridge toll to charge?

A. No, sir.

Q. You sell a straight railroad ticket?

A. Yes, sir.

Q. Nobody else uses that bridge but the M., K. & T.?

A. No, sir.

Q. No foot passengers nor no teams?

A. No, sir.

Q. Who has charge of the bridge here?

A. I believe C. Randecker is the bridge watchman and the bridge superintendent.

Q. Is he superintendent or watchman?

A. I don't know just his position. He watches the bridge and crosses the bridge to see there is no foot passengers.

Q. Is he the only one?

A. No, sir; I believe he has two assistants.

Q. Who employs him?

A. I don't know.

Q. Where does he get his pay-checks?

A. From the railroad company.

Q. From the pay-car the same as you do and at the same time?

A. Yes, sir.

Q. Do you know whether or not the bridge company has any office here?

A. No, sir.

Q. You don't know anything about that. Now, points from here to Sedalia, you say, the regular passenger fare of three cents a mile is charged?

A. Yes, sir.

Q. And there is no separate account kept of this freight or passenger business as far as your office is concerned?

A. No, sir.

Q. You simply remit what you receive?

A. Yes, sir.

Q. As receipts of the M., K. & T. railroad?

A. As receipts of the M., K. & T.

Mr. CROW: In regard to those tariff sheets, I want to introduce them in evidence.

A. Well, the notice wasn't very plain so I could understand just what you wanted, and I brought these along.

Q. It is the local tariff sheets I want. Will you furnish Mr. Zollinger here with them when he calls for them or you can
58 just mail them to him?

A. Yes, sir.

Mr. CROW: The local tariff sheet is offered in evidence.

Said offer is as follows, to wit:

(Said offer is marked "Exhibit B" and is hereto attached and made a part of this bill of exceptions.)

JAMES COWGILL, being duly sworn in behalf of the plaintiffs, testified as follows:

Direct examination by Mr. CROW:

Q. You are one of the railroad commissioners?

A. Yes, sir.

Q. Have been for five or six years?

A. Five years.

Q. You were one of the board at the time of the investigation that has reference to this matter?

A. Yes, sir.

Q. Now, I will get you to state, if you know of your own personal knowledge, as to whether or not this M., K. & T. Railway Company

is charging twenty-five cents toll for each passenger that passes over the bridge.

A. Yes, sir; I think on the 28th of October I paid the fare.

Q. Of this year?

A. Yes, sir; of this year. The fare was $1.40. I think the distance is thirty-eight miles.

Q. Where, to Moberly?

A. Yes, sir; at three cents a mile you would have to add to the tariff twenty-five cents as bridge toll to make that much; that would make $1.39.

Q. Do you know anything about who controls the stock of the bridge company?

A. No, sir; only from the evidence developed before the hearing that we had at Jefferson City.

Q. Was that the testimony of the agents of the railroad?

A. Yes, sir.

Q. What was it?

A. They testified that the M., K. & T. Railroad Company owned all the shares except, I think, 21 shares, and that a majority of them were held in trust by the officers of the road—the majority of the 21 shares.

59 Q. Anything said about any dividends being paid on that stock?

A. Yes, sir. The question was asked, I think, Mr. Jackson, if there was any dividends paid to these 28 shareholders, and he said there had not.

Q. Have you got in your possession a copy of the list owned by the bridge company and the M., K. & T. Company?

A. I don't know whether I have or not.

(Witness excused.)

JOSEPH FLORY, being duly sworn in behalf of the plaintiff-, testified as follows:

Direct examination by Mr. CROW:

Q. What official position do you occupy?

A. State railroad commissioner.

Q. I will get you to state, if you know, whether or not the M., K. & T. Railroad Company is charging twenty-five cents per passenger bridge toll for travel from here over the M., K. & T. railroad.

A. I paid it in October—on the 28th day of October, 1897; purchased a ticket here on that date for Moberly, a distance of thirty-eight miles, and paid $1.40 for it.

Q. What would be the statutory charges at three cents a mile?

A. At three cents a mile would be $1.14.

Q. Were you present at the hearing when this matter was up before the railroad commissioners?

A. Yes, sir.

Q. Do you know what the representatives of the road said there with reference to who controlled the stock of the bridge company?

A. My recollection is that they testified—the representatives of the railroad company testified—that the M., K. & T. Railroad Company held all the shares, with the exception of 31, I understood. Judge Cowgill said 21, but my understanding is 31—$3,100.00 worth of stock.

Q. Well, do you know, as a matter of fact, whether or not the M., K. & T. Railroad Company is operating the bridge as a part of the railroad?

A. Yes, sir; I do.

60 (Witness excused.)

T. J. HENNESSEY, being duly sworn in behalf of the plaintiffs, testified as follows:

Direct examination by Mr. CROW:

Q. What official position do you occupy?

A. Railroad commissioner.

Q. You are serving your second term now as railroad commissioner?

A. Yes, sir.

Q. You are acquainted with the facts about travel over the bridge here?

A. Yes, sir; I was on the board when this proceeding commenced.

Q. Do you know of your own knowledge whether or not they are charging that tariff?

A. Yes, sir; I went over on the same day with Judge Cowgill and Flory, and paid $1.40 fare in going over.

Q. From here to Moberly, a distance of 38 miles?

A. Yes, sir.

Q. You have known this bridge company and this bridge of the M., K. & T. for many years?

A. Yes, sir.

Q. Do you know of your own knowledge as to whether or not it has been operated by the M., K. & T. Railway Company or the bridge company?

A. No, sir; I don't. I wasn't at the other hearing, and don't know anything about it except from the record.

(Witness excused.)

Mr. CROW: That is all. Your honor, I would like the privilege of sending down those records introduced here, so when the controversy comes over the matter it will be in shape.

And this was all the testimony offered.

And thereupon the court returned its finding and judgment in favor of the plaintiffs.

And thereupon, within four days after the date of said finding and judgment, to wit, on the 6th day of December, A. D. 1897, the defendant filed its motion for a new trial in words and figures
61 as follows, to wit:

In the Circuit Court of Cooper County, Missouri, October Term, 1897.

H. W. HICKMAN, JAMES COWGILL, and JOSEPH FLORY, Suing as Members of the Board of Railroad and Warehouse Commissioners of the State of Missouri, Plaintiffs,
vs.
THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Defendant.

Comes now the defendant, by its attorney, and without waiving to any extent its objection to the jurisdiction of the court to try this cause, and still insisting and protesting against such jurisdiction, moves the court to set aside its finding and judgment herein and to grant a new trial of said cause for the following reasons, to wit:

1st. It appears from the record in the case that due and lawful proceedings had been taken for the removal of the same to the United States circuit court for the central division of the western district of Missouri, and that a transcript of the proceedings therein had been filed in said last-named court, where the case is now pending.

2d. The court erred in forcing a trial of the case at the time it was so tried and in refusing to give the defendant time in which to prepare and present the facts in the case, from which it would have appeared that the transcript in the case was filed in the United States court, as aforesaid, and that said cause was continued therein from term to term at the request of the plaintiffs.

62 3d. The court erred in admitting any evidence upon the petition because the same did not state facts sufficient to constitute a cause of action.

4th. The finding and judgment of the court are wrong because it appears from the evidence in the case that the plaintiffs had not performed the acts as railroad and warehouse commissioners of the State of Missouri which were the necessary preliminary steps to the institution of a suit against the defendant.

5th. The law of the State of Missouri does not authorize the proceeding commenced by the plaintiffs.

6th. The finding and judgment are against the evidence and against the law, and are for the wrong party, being for the plaintiffs when they should be for the defendant.

GEO. P. B. JACKSON,
Attorney for Defendant.

Which said motion the court on the 20th day of May, A. D. 1898, overruled; to which ruling and order of the court the defendant, by counsel, excepted at the time.

And within four days after the date of said finding and judgment, to wit, on the 6th day of December, 1897, the defendant filed its motion in arrest of judgment in words and figures as follows, to wit:

In the Circuit Court of Cooper County, Missouri, October Term, 1897.

H. W. HICKMAN, JAMES COWGILL, and JOSEPH FLORY, Suing as Members of the Board of Railroad and Warehouse Commissioners of the State of Missouri, Plaintiffs,
vs.
THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Defendant.

63 Now comes the defendant, by its attorney, and without waiving to any extent its objection to the jurisdiction of the court to try this case, and still insisting and protesting against such jurisdiction, moves the court to arrest the judgment herein for the following reason-, to wit:

1st. It appears from the record in the case that due and lawful proceedings had been taken for the removal of the same to the United States circuit court for the central division of the western district of Missouri, and that a transcript of the proceedings therein had been filed in said last-named court, where the case is now pending.

2d. The court erred in forcing a trial of the case at the time it was so tried and in refusing to give the defendant time in which to prepare and present the facts in the case, from which it would have appeared that the transcript in the case was filed in the United States court, as aforesaid, and that said cause was continued therein from term to term at the request of the plaintiffs.

3d. The court erred in admitting any evidence upon the petition, because the same did not state facts sufficient to constitute a cause of action.

4th. The finding and judgment of the court are wrong, because it appears from the evidence in the case that the plaintiffs had not performed the acts as railroad and warehouse commissioners of the State of Missouri which were the necessary preliminary steps to the institution of a suit against the defendant.

5th. The law of the State of Missouri does not authorize the proceeding commenced by the plaintiffs.

6th. The finding and judgment are against the evidence and against the law and are for the wrong party, being for the plaintiffs when they should be for the defendant.

GEO. P. B. JACKSON,
Att'y for Defendant.

64 Which said motion the court, on the 20th day of May, A. D. 1898, overruled; to which ruling and order of the court the defendant, by counsel, excepted at the time.

And thereupon leave was given to the defendant to file its bill of exceptions in this case on or before the 20th day of August, 1898, and the defendant now tenders this its bill of exceptions in this case, and prays that the same may be signed, sealed, filed, and made a part of the record herein, which is accordingly done on the 16th day of June, 1898.

DORSEY W. SHACKLEFORD, [SEAL.]
Judge of the Cooper Circuit Court.

The defendant duly perfected an appeal to the supreme court of Missouri.

GEO. P. B. JACKSON,
For Appellant.

65 And afterwards, to wit, on the 1st day of May, 1899, the following further proceedings were had in said cause, to wit:

H. W. HICKMAN ET AL., Resp.,
vs.
M., K. & T. R'Y CO. ET AL., App.

Come now the said parties, by attorneys, and, after argument herein, submit these causes to the court.

And afterwards, to wit, on the 30th day of June, 1899, the following further proceedings were had in said cause, viz:

H. W. HICKMAN, JAMES COWGILL, and Joseph Flory, Constituting the Board of Railroad and Warehouse Commissioners of the State of Missouri, Respondents,
vs.
THE MISSOURI, KANSAS & TEXAS Railway Company, Appellant.
} Appeal from Cooper County Circuit Court.

Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court here, being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Cooper county circuit court rendered be in all things affirmed and stand in full force and effect, and that the said respondents recover against the said appellant their costs and charges herein expended, and have therefor execution. (Opinion filed.)

Which said opinion is in the words and figures following, viz:

66 In the Supreme Court of Missouri, April Term, 1899. Court in Banc.

H. W. HICKMAN ET AL., Respondent-,
vs.
MO., KAN. & TEX. R'Y CO., Appellant-.

Opinion.

This is an appeal by the defendant from a decree and judgment of the circuit court of Cooper county in favor of the plaintiffs.

At the time the suit was instituted the plaintiffs constituted the board of railroad and warehouse commissioners of the State of Missouri.

The petition is as follows:

H. W. HICKMAN, JAMES COWGILL, and JOSEPH FLORY, Constituting the Board of Railroad and Warehouse Commissioners of the State of Missouri, Plaintiffs,

vs.

THE MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Defendant.

Plaintiffs state that they are the regularly elected, duly qualified, and acting railroad and warehouse commissioners of the State of Missouri, and constitute the board empowered by law to classify and regulate passenger and freight rates in the State of Missouri; that the defendant is a railroad corporation duly incorporated under the laws of the State of Kansas and authorized to do business in the State of Missouri; that said defendant owns an operates a line of railroad in this State, a portion of the main line of which is located in the county of Cooper, State of Missouri, and extends from said county across the Missouri river, over a bridge, to the county of Howard, in the State of Missouri; that said bridge over which said railroad is con-
67 structed is a part of the roadway of the same and is used as such; that said bridge is under the control and management of said defendant; that informal complaints have heretofore been made to plaintiffs, as the board of railroad and warehouse commissioners aforesaid, that arbitrary, illegal, and improper charges had been made by said defendant for carrying passengers and freight over that portion of defendant's said road which passes over said bridge; that plaintiffs, under the authority given them as the board of railroad and warehouse commissioners aforesaid, proceeded on the 16th day of July, 1895, after formal notice had been given to defendant, to examine into and determine upon the reasonableness of the charges made by said defendant for carrying freight and passengers over the bridge aforesaid; that it was disclosed by said examination that the defendant was charging more for carrying passengers and freight over said bridge than is authorized by law; that said defendant belongs to the class of railroad corporations designated by the laws of the State of Missouri as "class A;" that said class is only authorized to charge passengers at the rate of 3 cents per mile each; that said Boonville bridge is not exceeding one mile in length; that said defendant charges for carrying each local passenger over said bridge the sum of three cents per mile; that in addition thereto the said defendant makes an arbitrary charge of 25 cents for carrying each local passenger on its line of railway over said bridge; that said charge of 25 cents made, demanded, and received of each local passenger by said defendant is illegal, improper, and unauthorized by law; that said defendant charges and collects on freights transported over said bridge and between local stations upon the line of its railway in addition to the duly established rates for such transportation, as shown in tariffs filed in the office of said railroad and warehouse commissioners, the sum of five (5) cents per one hundred pounds on freights in lots of less than car-loads, and two cents per one hundred pounds on freights in car-loads; that
68 said charges so made, demanded, and received are excessive, unauthorized, and in violation of law.

That on the 22d day of July, 1895, plaintiffs, as the board of railroad and warehouse commissioners aforesaid, after having duly considered the complaints heretofore filed against the defendant, as aforesaid, found that the same were sustained by proper and sufficient evidence, and made and entered of record an order, directed to the said defendant railway company, that the arbitrary charges made by defendant for crossing passengers and freight over the bridge at Boonville, Missouri, aforesaid, be discontinued, and that a copy of said finding and order was by said plaintiffs forwarded to the general manager of said defendant's road.

Plaintiffs state that they are informed and believe the fact to be that the defendant is disregarding and ignoring said order, and is continuing, in violation of law, to charge, demand, and receive rates in excess of three cents per mile for carrying each passenger over that portion of its road which consists of said bridge, and that said defendant continues to charge, demand, and receive freight rates in excess of those authorized by law for carrying freight on that portion of its road of which said bridge over the Missouri river at Boonville constitutes a part.

Plaintiffs therefore ask that this court may issue a writ of injunction herein, or such other process, mandatory or otherwise, as may seem necessary in the premises, to restrain said defendant from further continuing to violate the law and the finding of said plaintiffs herein, acting as the board of railroad and warehouse commissioners aforesaid, that obedience to said order may be required of defendant, and that such other and further orders and decrees may be made in this cause as may seem upon a hearing to be right and proper in the premises.

R. F. WALKER,
Attorney General, for Plaintiffs.

In due time the defendant appeared and filed its petition and bond for the removal of the cause to the circuit court of the United States, the petition being as follows:

69 Your petitioner respectfully shows that it is the defendant in the above-entitled suit; that at and prior to time of the institution of this suit the defendant was, ever since has been, and now is a corporation created and existing under the laws of the State of Kansas, and that at said times and dates it was, has been, and now is a citizen of the State of Kansas and non-resident of the State of Missouri, in which this suit is brought; that the plaintiffs in said suit at the time of the institution thereof all and each were, ever since have been, and now are citizens and residents of the State of Missouri.

That the said suit is of a civil nature to enjoin the collection of certain charges for the transportation of passengers and freight over and across a bridge across the Missouri river between the counties of Cooper and Howard, in the State of Missouri, and that the amount and matter in dispute in said suit exceeds, exclusive of interest and costs, the sum and value of two thousand dollars ($2,000).

That the controversy in said suit is wholly between citizens of

different States, to wit, between your petitioner, a citizen of the State of Kansas at the time of the bringing of said suit and at this time, and the said plaintiffs, who, each and all of them, were then and still are citizens of the State of Missouri, and your petitioner offers herewith a bond with good and sufficient security for its entry in the circuit court of the United States for the central division of the western district of Missouri, on the first day of the next regular session or term, of a copy of the record in this suit, and for paying all costs that may be awarded by the circuit court of the United States if said court shall hold that this suit was wrongfully or improperly removed thereto, and your petitioner prays this honorable court to proceed no fa-ther herein except to make an order for the removal of this case to said United States circuit court, and to accept the said surety and bond and to cause the record herein to be re-
70 moved into said circuit court of the United States in and for the central division of the western district of Missouri, and it will ever pray.

At the October term, 1895, of the circuit court of Cooper county the defendant's petition for removal was denied, and thereupon the defendant procured and filed in the United States circuit court at Jefferson City a transcript of the proceedings in the Cooper circuit court. At the January term, 1896, of the Cooper circuit court the case was continued by the court on its own motion. At the May term, 1897, of the said court the case was again continued on application of the plaintiff to the October term, 1897, of said court; at which term the case, over the protest of the defendant and its objections to the jurisdiction of said court, was taken up and tried on the evidence of the plaintiffs without any participation by the defendant in the trial, and the decree rendered as prayed for in their petition, with judgment for costs. Afterwards, in due time, the defendant filed its motion for new trial and in arrest of judgment, which being overruled, it perfected its appeal to this court.

I.

Under the laws of the United States the circuit courts thereof have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity, when the matter in dispute exceeds, exclusive of interests, the sum or value of two thousand dollars, and in which the controversy is between citizens of different States. 25 U. S. Stats. at Large, p. 434, sec. —. Any such suit pending in a State court "may be removed into the circuit court of the United States for the proper district by the defendant or defendants therein, being non-residents of that State." *Ib.*, sec. 2.

And by sec. 3 of said act it is provided that whenever any party entitled to remove any such suit "may make and file a petition in such suit in such State at the time or at any time before the
71 defendant is required by the laws of the State or the rules of the State court in which such suit is brought to answer or plead to the declaration or complaint of the plaintiff, * * * and shall make and file therewith a bond, with good and sufficient

surety, for his or their entering in such circuit court on the first day of its then next session, a copy of the record in such suit, and for paying all costs that may be awarded by the said circuit court, if such court shall hold that such suit was wrongfully or improperly removed thereto, and also for their appearing and entering special bail in such suit if special bail was originally requisite therein. It shall be the duty of the State court to accept said petition and bond and proceed no further in such suit." * * *

It is contended for the defendant that when the petition and bond for removal *was* filed in the case in the Cooper county circuit court, the jurisdiction of that court to take any further proceedings therein, except to make an order transferring the case to the circuit court of the United States, ceased, and that its proceedings thereafter, which culminated in the decree aforesaid, *was coram non judice* and void. Therefore the decree and judgment should be reversed.

It may be conceeded that the petition and bond for removal are in proper form, and that the petition states facts which if true are sufficient to authorize the transfer of the case to the circuit court of the United States under the statute cited, and it may be further conceded that an issue upon the facts stated in the petition could not be raised and tried in the State court for the purposes of determining the question of its jurisdiction. The State court "must take the facts to be as they are stated in the record and the petition. It has no jurisdiction to pass upon any such question. That is the exclusive province of the Federal court." Black's Dillon on Removal of Causes, § 191, and cases, note 30. The jurisdiction of the State court, however, is not ousted by the mere filing of the
72 petition and bond. "In order to warrant a removal from a court of a State into a circuit court of the United States, according to the terms of the act, the necessary diverse citizenship must exist." Powers *vs.* Chesapeake & Ohio Railway, 169 U. S., 92.

The petition when filed becomes a part of the record, and the defendant's right of removal depends upon the facts as they appear from the whole record. Stone *v.* South Carolina, 117 U. S., 431. As was said by Waite, C. J., in that case: "A State court is not bound to surrender its jurisdiction of a suit on a petition for removal until a case has been made which on its face shows that the petitioner has a right to the transfer." Yulee *v.* Vose, 99 U. S., 539, 545; Removal cases, 100 U. S., 457, 474. It is undoubtedly true, as was said in Steamship Company *v.* Tugman, 106 U. S., 118, 122, that upon the filing of the petition and bond, the suit being removable under the statute, the jurisdiction of the State court absolutely ceases, and that of the circuit court of the United States immediately attaches; but still, as the right of removal is statutory, before a party can avail himself of it he must show upon the record that his is a case which comes within the provisions of the statute. As was said in Insurance Company *v.* Pechner, 95 U. S., 183, 185: "His petition for removal when filed becomes a part of the record in the cause. It should state facts which, when taken in connection with such as already appear, entitle him to the transfer. If he fails in this, he has not in law shown to the court that it cannot 'proceed further with the

suit.' Having once acquired jurisdiction, the court may proceed until it has been judicially informed that its power over the cause has been suspended." The mere filing of a petition for the removal of a suit which is not removable does not work a transfer. To accomplish this, the suit must be one that may be removed, and the petition must show a right in the petitioner to demand the
73 removal. This being made to appear on the record, and the necessary security having been given, the power of the State court in the case ends and that of the circuit court begins.

All the issues of fact made upon the petition for removal must be tried in the circuit court, but the State court is at liberty to determine for itself whether, on the face of the record, a removal has been effected. If it decides against the removal and proceeds with the cause, notwithstanding the petition, its ruling on that question will be reviewable here after final judgment under section 709 of the Revised Statutes. Removal cases, 100 U. S., 457, 472; Railroad Co. *v.* Mississippi, 102 U. S., 135, 141; Kerr *v.* Huidekoper, 103 U. S., 485; Railroad Co. *v.* Koontz, 104 U. S., 15; Chesapeake & Ohio Railroad Co. *v.* White, 111 U. S., 134, 137. If the State court proceeds after a petition for removal, it does so at the risk of having its final judgment reversed, if the record on its face shows that when the petition was filed that court ought to have given up its jurisdiction."

So that the question whether a removal would be effected by the filing of the petition and bond remained to be decided by the Cooper circuit court on the face of the record as made up after the filing of the same, and unless judicially informed by the record so made that the suit was removable, it might proceed in the exercise of its jurisdiction.

The fact stated in the petition for removal that would entitle the defendant to the removal was that the plaintiffs are citizens of the State of Missouri and the defendant is a citizen of the State of Kansas. Now, while this fact is not to be disputed, but taken as true, it further appears from the record that "the controversy" inaugurated by their petition is not between them in their individual character as citizens of the State of Missouri and the defendant, but in their official character as members of "The Board of Railroad and Warehouse Commissioners of the State of Missouri." Hence, it is argued for the respondents by the attorney general that
74 the controversy is not between citizens of different States, but between the State of Missouri and a citizen of the State of Kansas, and as the statute does not authorize the removal of a suit between a State and citizens, and a State cannot be a citizen of any State, that it thus appears from the record that the case was not removable under the statute. The jurisdiction of the circuit court of Cooper county was not divested by the application for removal, and it committed no error in proceeding with the case to final judgment. This presents the crucial question on this appeal.

Is this a suit by the State of Missouri against the defendant? If so, then beyond question the case was not removable to the U. S. court, and the circuit court of Cooper county was not divested of its

jurisdiction; for it is well-settled law that "a suit instituted by a State in one of its own courts against a citizen of another State is not removable to the circuit court of the United States on the grounds of diversity of citizenship of the parties." State of Ala. *vs.* Wolfe, 18 Fed. Rep., 836; Postal Telegraph Cable Co. *v.* Alabama, 155 U. S., 482; State *v.* South Carolina, 117 U. S., 143; Germania Ins. Co. *v.* Wisconsin, 119 U. S., 473; Ames *v.* Kansas, 111 U. S., 449.

Although the State of Missouri is not a nominal party to the suit, yet if it is the real party in interest the controversy is between the State and the defendant, and the Federal statute does not apply, and the question whether the State is the actual party to the controversy must be determined by a consideration of the whole record. *In re* Ayres, 123 U. S., 443; Carson *v.* Hyatt, 118 U. S., 279; Hagard *v.* Southern, 117 U. S., 52; Maryland *v.* Baldwin, 112 U. S., 490. The law looks to "things, not names; to the actors in controversies and suits, not to the mere forms or inactive instruments used in conducting them, in virtue of some positive law." McNutt *v.* Bland, 2 How., 9.

The positive law authorizing this action is sec. 2653, R. S. 1889, the provisions of which bearing upon the present in-
75 quiry are as follows: "Where the complaint involves either a private or a public question as aforesaid, and the commissioners have made a lawful order or requirement in relation thereto, and where such common carrier, or the proper officer, agent or employé thereof, shall violate, refuse or neglect to obey any such order or requirement, it shall be lawful for the board of railroad commissioners, or any person or company interested in such order or requirement, to apply in a summary way, by petition, to any circuit court at any county in this State into or through which the line of railway of the said common carrier enters or runs, alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter on such short notice to the common carrier complained of as the court shall deem reasonable * * * and if it be made to appear to the court on such hearing * * * that the lawful orders or requirements of such commissioners drawn in question have been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation of such order or requirement of said commissioners, and enjoin obedience to the same. * * * And in case of any disobedience of any such injunction or other proper process, mandatory or otherwise, it shall be lawful for such court to issue writs of attachment, or other proper process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers or agents, of the same, against any owner, lessee, trustee, receiver or other persons failing to obey such writ of injunction or other process, mandatory or otherwise; and said court may make an order directing such common carrier or other person so

disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money, not exceeding for each
76 carrier or person in default the sum of one hundred dollars per day, for every day after a day to be named in the order that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such money shall be payable to the school fund of the county in which such proceeding is pending; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by final decree *in personam* in such court. * * * Whenever any such petition shall be filed by the commissioners as aforesaid, it shall be the duty of the attorney general, when requested by said commissioners, to prosecute the same. * * * The costs of such proceedings may be, with the approval of the attorney general and governor of the State, when such suit is brought by any private person, and when brought by said commissioners shall be ordered by the commissioners to be paid in the first instance out of any money in the treasury not otherwise appropriated; and if upon final hearing the decision is against the said common carrier or other person against whom the proceeding is being prosecuted, such common carrier or person shall be liable for the costs, for which judgment may be rendered as in any other case."

By section 2658 it is further provided that "to defray the necessary expenses of the railroad commissioners in making investigations and prosecuting suits, and to pay all necessary costs attending the same, there is hereby appropriated, out of any money in the State treasury not otherwise appropriated, the sum of ten thousand dollars, to be drawn upon the warrant of the State auditor, issued upon the requisition of the railroad commissioners, approved by the governor, which requisition shall be accompanied by an itemized statement of the costs and expenses to be paid."

The general rule is that "when the plaintiff has no real
77 interest in the subject-matter of the controversy, and can derive no advantage from the judgment; but the suit is required to be brought in his name because he holds the formal right to sue, although the action is really prosecuted for the benefit of another, the record plaintiff is only a nominal party, whose citizenship will not affect the right of removal; such right will depend upon the relative citizenship of the real party in interest."

Black's Dillon on Removal of Causes, § 86.

Under this statute the suit is brought in the name of the "Board of Railroad Commissioners," because they hold the formal right to sue, but the members of that board, neither individually nor collectively, have any interest in the subject-matter of the controversy, and can derive no advantage or benefit nor suffer any injury or loss from the judgment therein. In Ferguson *v.* Ross, 38 Fed. Rep., 161, holding that an action under the laws of New York, in the name of "the Shore Inspector," to recover a penalty for depositing pro-

hibited material in the waters of the bay and harbor of New York, which penalty, when recovered, goes into the State treasury, is in effect an action by the State, and therefore not removable under the act of Congress in question, it was said: "The nominal plaintiff here is an individual, but he sues only in his official character. The suit is brought to enforce a police regulation of the State. He has no personal interest in its subject-matter, not even for his fees or commission, for he is a salaried officer, whose compensation is secured, irrespective of the result of the suits he may bring. In the event of his removal from office the suit would be continued by his successor, not by himself. . Courts will look behind and through the nominal parties on the record to ascertain who are the real parties to the suit, and will determine whether a State is the real party to an action brought by or against its officer by a consideration of the whole record" (citing authorities). "The real party prosecuting these suits is the State of New York, and
78 they are therefore not removable under the act of 1887." On the other hand, in Regan *v.* Farmers' Loan & Trust Co., 154 U. S., 362, holding that a suit in equity against the railroad commissioners of the State of Texas, assented to by that State in the act creating the commission, was not a suit against the State, it was said: "So far from the State being the only real party in interest and upon whom alone the judgment effectively operates, it has in a pecuniary sense no interest at all. Going back of all matters of form, the only parties pecuniarily affected are the shippers and the carriers, and the only direct pecuniary interest which the State can have arises when it abandons its governmental character and as an individual employs the railroad company to carry its property. There is a sense, doubtless, in which it may be said that the State is interested in the question, but only a governmental sense.

It is interested in the well-being of its citizens, in the just and equal enforcement of all its laws, but such governmental interest is not the pecuniary interest which causes it to bear the burden of an adverse judgment. Not a dollar will be taken from the treasury of the State, no pecuniary obligation of it will be enforced, none of its property affected by any decree which may be rendered." While neither of these cases, upon the facts in judgment, for obvious reasons, can be regarded as direct authority in the present case, an analogue of which cannot perhaps be found in the reports, much reliance is placed upon the reasoning in each by counsel respectively, the attorney general contending that the case in hand is within the reasoning of the first, and counsel for defendant that it is within the reasoning of the last. So these cases may serve, if not for authority, at least as pointers to a proper solution of the question of "real interest" under the statute.

The State, in its governmental capacity, having, in previous sections of the statute, made provision for regulating the rate
79 and charges of common carriers for carrying passengers and freight, and provided for a hearing before its board of commissioners of all complaints for a violation of those regulations,

and that the finding of the board shall be *prima facie* evidence of the reasonableness and justness of the charge by it found and required. This section of the statute makes provision for a civil action to enforce the requirement in behalf of two classes of persons: First, "the board of railroad commissioners;" second, "any person or company interested in such order or requirement." Now, while in actions under the statute by persons of the second class, which generally will be shippers or passengers, the State has no pecuniary interest, it is not so in actions under this statute by persons of the first class, its board of railroad commissioners. In such actions it abandons its governmental character, enters a court of competent jurisdiction as a suitor under the law, incurs the same liability for costs and expenses as does any other suitor, to be paid under the express provision of the statute out of any money in the treasury not otherwise appropriated, and is moreover pecuniarily interested not only by reason of the liabilities it incurs in the action, but because of its pecuniary interest in the judgments which may be obtained and which when pushed to the final extremity of execution may result in the payment of penalties, not directly into the State treasury, it is true, but into the treasury of one of its political subdivisions for the benefit of the public schools, to the establishment and maintenance of which its credit is pledged by the organic law. It seems to us, therefore, that the State in addition to its governmental has a real pecuniary interest in the subject-matter of this controversy, and that the suit is being prosecuted for its benefit in every sense and is not subject to removal to the United States court, and we so hold.

(2.) Counsel for defendant in his reply brief contends that the judgment should be reversed because the circuit court of
80 Cooper county proceeded to trial when the defendant had no reason to expect that a trial would be insisted on. It appears from the record that the cause came on for trial in the Cooper circuit court in due course nearly two years after defendant's motion for a removal to the U. S. court had been overruled. By the overruling of that motion the defendant was advised in the most direct and formal manner that the circuit court of Cooper county intended to maintain its jurisdiction to try and determine this cause in due course.

Thereupon it chose to stand upon its motion, filed a transcript of the proceedings of the Cooper circuit court in the United States circuit court, and thereafter persistently maintained that the case had been transferred—that the Cooper circuit court had no jurisdiction to proceed further therein—and neglected to make any preparation for its trial in said court up to the very day of the trial, when it filed a written protest, in which, protesting in the strongest terms against the jurisdiction of that court, it asked the court to suspend further action until the next term of court, in order that the defendant might have sufficient time "to establish that this court has no jurisdiction to proceed in this cause or to entertain jurisdiction over the same; or, if the court shall hold that it has such jurisdiction, then to enable the defendant to determine what course it will

pursue and whether or not it will submit to the jurisdiction of the court or whether it will take part in the proceedings of the case, still protesting against the jurisdiction of the court, or whether it will refuse to appear and take any part in the proceeding." The court had long since held that it had jurisdiction, and we know of no law or rule of practice by which courts are required to delay the exercise of their jurisdiction until suitors shall have made up their minds as to whether they will submit to it or not. The court committed no error in proceeding with the trial without giving heed to this protest. The judgment of the circuit court is affirmed. All concur except Sherwood, J., absent.

THEO. BRACE, *J.*

81 And afterwards, to wit, on the 8th day of July, 1899, the following further proceedings were had in said cause, viz:

H. W. HICKMAN ET AL., Resp.,
v.
M., K. & T. R'Y Co., App.

Comes now the said appellant, by attorney, and files its motion for a rehearing herein.

Which said motion for a rehearing is in the words and figures following, viz:

82 In the Supreme Court of Missouri, in Banc, April Term, 1899.

W. H. HICKMAN ET AL., Respondents,
vs.
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Appellants. } No. —.

Motion for Rehearing.

Now comes the above-named appellant and moves the court to grant a rehearing in this cause for the following reasons:

I.

Because the court has overlooked questions decisive of this case which were duly submitted by the appellant in the briefs heretofore filed, in this:

That the appellant complained that the circuit court of Cooper county had erred in refusing to grant a continuance in the case, because of the reason that the plaintiffs and their attorneys, by their conduct, had led the defendant to believe that they recognized the proper jurisdiction over the case as being vested in the Federal court, and to believe that no effort would be made to force a trial of the case in the State court.

And also in this, that the court wholly overlooked the point made by the appellant to the effect that even if an investigation beyond

what appeared upon the face of the record would establish that the case was not removable, the State court had no power to make such investigation, and the exclusive jurisdiction to investigate and determine from anything existing beyond the face of the record whether or not the case was removable was lodged exclusively in the Federal court.

II.

Because the court, in reaching the conclusion which it did, made an investigation outside of what appears upon the face of the record in the case, and because of the conclusion reached by such ulterior investigation determined that the case was not removable, when this court had no power to make such investigation, for the reason,
83 in the first place, that such investigation, as already stated, is lodged exclusively in the Federal court, and, in the next place, because there is nothing in the record to indicate that the court below had attempted to make such investigation and dispose of the case upon any such theory, and therefore this court was attempting upon a mere appeal, not only to review the action of the court below, but to proceed to an investigation wholly outside of anything attempted by the circuit court.

III.

Because this court in deciding the case has assumed to go beyond any controversies or rights involved in this case, and has undertaken to decide the right to remove this case by reason of the supposed interests of the State of Missouri in other possible subsequent controversies and suits, but which rights and interests could not arise or be determined in the present case.

IV.

Because this court in deciding the case rested its opinion and conclusion upon the supposed fact that the State of Missouri had a direct monetary interest in the case, and thereby wholly misconceived the nature and possible effect of this proceeding and of the relation of the parties to it, and at the same time misconceived and misapplied the decisions of the Supreme Court of the United States.

V.

Because the court assumed that this proceeding was regularly commenced by the plaintiffs in pursuance of a certain statute, whereas from the allegations of the plaintiffs' petition and from the evidence introduced by the plaintiffs upon the *ex parte* trial in the circuit court it affirmatively appears that they had not complied with the statute of the State, which this court says authorized the institution of this suit.

GEO. P. B. JACKSON,
Attorney for Appellant.

Received a copy of the above motion this — day of July, 1899.

——— ———,
Attorney for Respondents.

84 And afterwards, to wit, on the 14th day of July, 1899, the following further proceedings were had in said cause, viz:

H. W. HICKMAN ET AL., Resp.,
vs.
M., K. & T. R'Y Co., App.

Now, at this day, the court, having fully considered and understood the motion heretofore filed for a rehearing herein, doth order that said motion be, and the same is hereby, overruled.

And afterwards, to wit, on the 20th day of July, 1899, the further following proceedings were had in said cause, to wit:

H. W. HICKMAN ET AL., Respondents,
vs.
MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY, Appellant.

Now, at this day, there is presented to the Honorable James B. Gantt, chief justice of the supreme court of Missouri, in chambers, a petition for supersedeas, an assignment of errors, a writ of error to the Supreme Court of the United States, a citation directed to said respondents citing and admonishing them to be and appear at a Supreme Court of the United States on the 19th day of August, 1899; which said writ of error is allowed, said citation signed, and said supersedeas granted upon the said appellant filing a bond, conditioned according to law, in the penal sum of one thousand dollars.

Which said petition for supersedeas is in words and figures as follows, to wit:

In the Supreme Court of Missouri. In Banc.

H. W. HICKMAN, JAMES COWGILL, and JOSEPH FLORY,
85 Respondents,
vs.
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Appellant. } No. —.

To the Honorable James B. Gantt, chief justice of the supreme court of the State of Missouri:

The undersigned, Missouri, Kansas & Texas Railway Company, respectfully shows to your honor that it has filed in this court an assignment of errors in the above-entitled cause and applied to the clerk of the supreme court of Missouri for the issuance of a writ of error from the Supreme Court of the United States to the supreme court of the State of Missouri.

Wherefore your petitioner prays that, in accordance with sec. 999 of the Revised Statutes of the United States, you sign citations to the above-named H. W. Hickman, James Cowgill, and Joseph Flory, defendants in error under said writ of error from said Supreme Court of the United States, citing them and each of them in due form to be and appear before said Supreme Court of the United States within the time provided by law, and there to show cause, if

any there be, why the judgment of the supreme court of the State of Missouri should not be corrected.

And your petitioner further shows to your honor that there has never been any trial upon the merits of the above-entitled cause of H. W. Hickman *et al. v.* Missouri, Kansas & Texas Railway Company; that your petitioner, relying upon the understanding that the case would only be tried in the circuit court of the United States, to which the same had been removed upon a proper petition and bond filed by this petitioner in due time in the circuit court of Cooper county, Missouri, where said cause originated, made no preparation whatever for the trial of the case upon the merits in said circuit court of Cooper county, Missouri; that your petitioner received no notice whatever of any kind that the same would be pressed for trial on or about the 3rd day of December, 1897, or at any other time; that your petitioner's attorney, who alone had charge of said case, was unable to be present on the said 3rd day of December, 1897, because of the setting of a case in which he was sole counsel on one side for hearing in the Supreme Court of
86 the United States at about that time; and your petitioner further shows to your honor that, notwithstanding the protest filed by the defendant and the request for a postponement, the said cause was taken up in the absence of the defendant and its said attorney and an *ex parte* hearing had, and upon such *ex parte* hearing the court entered a judgment and decree restraining the defendant from collecting certain tolls which the defendant claims it was authorized to collect as the agent of the Boonville Railroad Bridge Company, which was expressly chartered by the State of Missouri for the purpose of transporting persons and freight across the Missouri river, and for which service it was authorized to charge certain tolls.

Your petitioner farther shows to your honor that by virtue of the practice in such cases and under the authority of sec. 1003 of the Revised Statutes of the United States and equity rule 93 your honor is fully authorized and empowered to grant a supersedeas suspending the said decree until the judgment of the supreme court of Missouri can be reviewed by the Supreme Court of the United States, upon the giving of such bond as your honor may require, and upon compliance with the provisions of sec. 1007 of the Revised Statutes of the United States.

Wherefore, in order that your petitioner may furnish said bond and file the same within the time provided by said sec. 1007, it now farther prays that your honor make an order suspending the said judgment and decree of the said circuit court of Cooper county, Missouri, and of the supreme court of the State of Missouri, affirming the said judgment of the circuit court of Cooper county, Missouri, until the Supreme Court of the United States can review the same upon the writ of error aforesaid, and that your honor will fix the amount of the bond required of your petitioner to effect the said supersedeas.

MISSOURI, KANSAS & TEXAS
RAILWAY COMPANY,
By GEO. P. B. JACKSON, *Its Attorney.*

87 And which said assignment of errors — in words and figures as follows, to wit:

In the Supreme Court of Missouri. In Banc.

H. W. HICKMAN, JAMES COWGILL, and JOSEPH FLORY, Respondents,
vs.
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Appellant. } No. —.

Now comes the above-named appellant, and for the purpose of having the judgment of the supreme court of the State of Missouri reviewed upon writ of error from the Supreme Court of the United States, the said Missouri, Kansas & Texas Railway Company submits the following assignment of errors, to wit:

The supreme court of the State of Missouri erred—

I.

In holding and deciding that the State of Missouri was in effect a party to this cause.

II.

In holding and deciding that the State court had authority or jurisdiction to investigate and inquire under the circumstances of this case whether or not the said State of Missouri was in effect the real party to this suit.

III.

In holding and deciding that the provision of the statute of the State of Missouri for defraying the expenses incurred by the railroad commissioners in that suit rendered said State of Missouri liable for the costs of this case, so as to make it the real party in interest.

IV.

In holding and deciding that the possibility of the State of Missouri being entitled to recover a penalty under some contingency subsequent to or which might possibly arise on account of a violation of the judgment that might be rendered in this case gives the State of Missouri such a monetary interest in the result
88 of this case as to make it in effect the real party in interest.

V.

In holding and deciding that the case of Reagan *et al. v.* Farmers' Loan & Trust Company, 154 U. S., 362, was not conclusive of the questions presented in this case.

VI.

In holding and deciding that the laws of the State of Missouri authorized the proceeding commenced by the plaintiffs Hickman,

Cowgill, and Flory against The Missouri, Kansas & Texas Railway Company in the circuit court of Cooper county, Missouri.

VII.

In holding and deciding that this case was not removable from the circuit court of Cooper county, Missouri, to the circuit court of the United States of the central division of the western district of Missouri.

Wherefore, and because of the errors above specified, the said Missouri, Kansas & Texas Railway Company prays that the judgment of the supreme court of the State of Missouri may be reversed.

GEO. P. B. JACKSON,
Attorney for Missouri, Kansas & Texas R'y Co.

And which said order granting supersedeas is in words and figures as follows, to wit:

In the Supreme Court of Missouri, in Chambers. In Vacation.

H. W. HICKMAN, JAMES COWGILL, and JOSEPH FLORY, Respondents,
vs.
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Appellant. } No. —.

Now, on this day, comes the Missouri, Kansas & Texas Railway Company, and presents its petition praying for a citation in
89 pursuance of a writ of error sued out by it as plaintiff in error against H. W. Hickman, James Cowgill, and Joseph Flory, as defendants in error, whereby the said Missouri, Kansas & Texas Railway Company seeks to review and have corrected a judgment entered by the supreme court of the State of Missouri in the above-entitled cause of H. W. Hickman, James Cowgill, and Joseph Flory, respondents, against Missouri, Kansas & Texas Railway Company, appellant, and further praying for an order of supersedeas to suspend the judgment of the circuit court of Cooper county, Missouri, and of the supreme court of the State of Missouri, affirming said judgment of the circuit court of Cooper county, Missouri.

Wherefore, in accordance with the statutes of the United States, I, James B. Gantt, chief justice of the supreme court of the State of Missouri, have this day signed citations to the said H. W. Hickman, James Cowgill, and Joseph Flory.

And it appearing that ample authority exists therefor, and that it is in accordance with the practice provided in such cases by the statutes of the United States and the rules of the Supreme Court of the United States, I, the said James B. Gantt, chief justice of the supreme court of the State of Missouri, do hereby order that the said judgment of the circuit court of Cooper county, Missouri, and of the supreme court of the State of Missouri shall stand suspended with the decision of the Supreme Court of the United States upon the aforesaid writ of error, upon condition, however, that the said

plaintiff in error, Missouri, Kansas & Texas Railway Company, shall within the time prescribed by the laws of the United States, to wit, sixty days from the date of the judgment of the supreme court of the State of Missouri, file in said last-named court a bond in favor of the said defendants in error, W. H. Hickman, James Cowgill, and Joseph Flory, in the sum of one thousand dollars, conditioned that if the said Missouri, Kansas & Texas Railway Company shall abide the decision and judgment which may be rendered by the Supreme Court of the United States on said writ of error, and shall pay all costs that may be adjudged against
90 it in said case, then such bond shall be void; otherwise to remain in full force and effect.

In witness whereof I have hereunto set my hand, at chambers, in the city of Jefferson, Missouri, this 20th day of July, 1899.

JAS. B. GANTT,
Chief Justice of the Supreme Court of Missouri.

And afterwards, to wit, on the 14th day of August, 1899, the further following proceedings were had in said cause, viz:

H. W. HICKMAN ET AL., Respondents,
vs.
M., K. & T. R'Y Co., Appellant.

Now, at this day, comes the said appellant, by attorney, and files its supersedeas bond herein in the sum of one thousand dollars; which said bond is approved, ordered filed, and made a part of the record herein.

Which said bond is in words and figures as follows, to wit:

Know all men by these presents that we, The Missouri, Kansas & Texas Railway Company, as principal, and Lewis C. Nelson and J. M. Nelson, Jr., as sureties, are held and firmly bound unto H. W. Hickman, James Cowgill, and Joseph Flory, constituting the board of railroad and warehouse commissioners of the State of Missouri, in the full and just sum of one thousand dollars, to be paid to the said H. W. Hickman, James Cowgill, and Joseph Flory, commissioners, as aforesaid; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at the April term, A. D. 1899, of the supreme court of Missouri, in a suit depending in said court between H. W. Hickman, James Cowgill, and Joseph Flory, railroad and
91 warehouse commissioners of the State of Missouri, respondents, and The Missouri, Kansas & Texas Railway Company, appellant, judgment was rendered against the said appellant, and the said appellant having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, — a citation directed to the said respondents, citing and admonishing them to be and appear at a Supreme Court of the United States, to be held at Wash-

ington, D. C., in not exceeding thirty days from and after the date of said citation:

Now, the condition of the above obligation is such that if the said Missouri, Kansas & Texas Railway Company shall prosecute said writ to effect and answer all damages and costs if it fail to make good its plea, then the above obligation to be void; else to remain in full force and virtue.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, [SEAL.]
By JAMES HAGERMAN,
General Solicitor. [SEAL.]
LEWIS C. NELSON. [SEAL.]
J. M. NELSON, JR. [SEAL.]

Sealed and delivered in presence of—
—— ——.

Approved by—
JAMES B. GANTT,
C. J. Supreme Court of Mo.

92 STATE OF MISSOURI, *set:*

I, Jno. R. Green, clerk of the supreme court of the State of Missouri, certify that the foregoing is a full, true, and complete transcript of the record and proceedings in a certain cause entitled H. W. Hickman *et al. vs.* M., K. & T. R'y Co., lately pending in this court, as fully and complete as the same appear of record and on file in my said office.

In witness whereof I have hereunto set my hand as clerk and affixed the seal of said court. Done at office, in the city of Jefferson, this 18th day of August, A. D. 1899.

[Seal of the Supreme Court of Missouri.]

JNO. R. GREEN, *Clerk.*

Endorsed on cover: File No., 17,502. Missouri supreme court. Term No., 127. The Missouri, Kansas & Texas Railway Company, plaintiff in error, *vs.* H. W. Hickman, James Cowgill, and Joseph Flory, constituting the board of railroad and warehouse commissioners of the State of Missouri. Filed August 31, 1899.